

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.2345/DEL/2024
(Assessment Year : 2018-19)**

Imperial Housing Ventures Pvt. Ltd.,
Room No.205, Welcome Plaza,
Sector 54, Golf Course Road,
Shakarpur, East Delhi,
Delhi – 110 092.

vs.

Pr.CIT (Central),
Delhi-2.

(PAN : AACCI2023E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Aggarwal, Sr. Advocate
Shri Shailesh Gupta, Advocate
REVENUE BY : Shri Kailash Dan Ratnoo, CIT DR

Date of Hearing : 30.04.2025
Date of Order : 30.06.2025

ORDER

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. This appeal is filed by the assessee against the order of the Learned Pr. Commissioner of Income-tax (Central), Delhi-2 [“Ld. PCIT”, for short] dated 15.03.2024 for Assessment Year 2018-18.
2. Brief facts of the case are, assessee filed its return of income on 23.10.2018 declaring an income of Rs.20,38,100/-. The case was selected for scrutiny and subsequently order under section 143(3) of the Income-

tax Act, 1961 (for short 'the Act') was passed vide order dated 24.07.2021. Subsequently, Id. PCIT, Central Delhi 2, while examining the assessment order passed u/s 143(3) of the Act observed that the AO has failed to make enquiries/verification in respect of disallowance made u/s 14A of the Act and also AO has allowed excess TDS claimed by the assessee without enquiring the claim. Accordingly, he issued show-cause notice to the assessee and the relevant notice was reproduced at page 2 of the impugned order. In response, assessee submitted that the assessee has not earned any exempt income and assessee also submitted computation of income and audited Balance Sheet before him, also submitted that since assessee has not earned any exempt income during the year, no disallowance can be made u/s 14A of the Act and relied on several decisions which were reproduced in the impugned order. After considering the above submission, Id. PCIT rejected the same and by heavily relying on the CBDT Circular No.5 dated 11.02.2014 observed that CBDT Circular is applicable retrospective in nature. Since AO has not made necessary enquiries, therefore, he directed the AO to make proper enquiry and after due verification on the issue of disallowance under Rule 8D as per law. Further Id. PCIT observed that assessee has reported turnover/sale of Rs.25,05,58,794/-, however as per Form 26AS, TDS was deducted u/s 194 (1A) of the Act for the value of

Rs.51,14,99,819/- on which TDS was deducted of Rs.50,19,820/-. He observed that the assessee has under declared turnover/sales value and accordingly a notice was issued to the assessee why the excess TDS claimed by the assessee should not be disallowed. In response, assessee has submitted as under :-

“ With reference to query that receipt as per profit and loss account and receipt as per 26AS is not matching it is submitted as under. -

During the course of assessment proceeding query has been raised vide notice dated 02/11/2020 to reconcile the receipt as per profit and loss account and receipt as per 26AS. In this regard it has been submitted during assessment proceeding that the assessee is engaged in the business of real estate and accordingly revenue in respect of ongoing projects is recognized on the basis of Percentage of Completion Method (POCM) in accordance with Accounting Standard-7 and Guidance Note issued by the ICAI. The receipt appearing in 26AS is the amount on which TDS were deducted by buyers on the basis of payment given to assessee and as such revenue shown in profit and loss account is not comparable with Income/receipts shown in 26AS. The POCM for revenue recognition is being followed by the assessee from last so many years and there is no change in method of accounting Hon'ble ITAT Delhi in the case of Lloyd Insulation (India) Ltd vs DCIT, Circle -4(1), New Delhi ITA No 2400/Del/ 2011 held as under: -

"Earning of income is a continuous, indivisible process embedded in the business dynamics especially in the case of contractors' job contract accounting. The income is recognized for a particular period, statutorily for one year on the basis of the method employed by an assessee. The income or loss of an assessee is the cumulative result of the working carried on by the assessee and reasonably measured for that particular assessment year. Even the section 199 does not contemplate that there should be immediate nexus between the income as such and the TDS made out of a particular payment. Tax deduction at source is basically a machinery provision for collecting tax on the potential income of the assessee.

The pith and substance is that it may not be possible all the time to co-relate a specific amount of TDS with a specific amount of income earned by an assessee in a particular assessment year. If at all such a nexus is required, such nexus is rather notional or conceptual, rather than specific or immediate. When the law has used the words in section 199 of the Income-tax Act that "credit shall be given to the tax deducted at source" on production of the certificate for the assessment year for which such income is assessable; it implied that the nexus between TDS and the corresponding income element would remain rather notional/conceptual. In this connection, reference is made to the Mumbai Tribunal decision in the case of Toyo Engineering India Ltd. vs. JCIT SR 27 reported in (2006) 5 SOT 616 (Mum), copy enclosed

The provisions of section relating to deduction of tax at source are not charging sections or computation section unless and until it is followed by an assessment order

making a charge of tax. The deduction of tax is not a levy of tax. Deduction of tax at source is merely one of the mode of collection of tax. The amount on which TDS is deducted is subject to charge as per the provisions of the Act. There are few instances which can further elaborate this view. For example, the recipient maintains account on cash basis which may not match with the amounts certified in the TDS Certificate due to the reason that the deductor has maintained the account on mercantile basis. Naturally the deductor will deduct the tax on accrual basis; however, the recipient shall disclose the income on receipt basis. In this situation, there shall always be a mismatch between the amount of receipt as per TDS Certificate and the taxable income offered by the assessee. Due to this reason, the statute has clarified that it is not necessary that the receipts on which tax was deducted as per TDS Certificate should be offered to tax in the same assessment year as per the dates mentioned in the TDS Certificate. There can be an instance that the TDS was deducted on the income which may not be subject to tax at all, such as, eligible for deduction u/s. 10A, etc. So the deduction of tax on an income does not ipso facto declare that the amount referred in the TDS certificate is subject to tax on the whole figure that too on the same year mentioned in the certificate. An income of a taxpayer is not required to be computed merely with reference to the TDS Certificate but assessment of an income is altogether an independent exercise.

Therefore, the addition made by the AO on the basis that the assessee has claimed TDS credit of Rs. 6,18,49,871/- and therefore, the sum of Rs.29,08,07,163/- as the income of the assessee is without appreciating the consistent method of accounting regularly followed by the assessee for income recognition in respect of job contracts, without appreciating that the assessee has already declared income from job contracts of Rs.306.73 crores more than what has been the cumulative total reflected in the TDS certificates of Rs.259.42 crores as explained above satisfying the provisions of 199 of the Income-tax Act, 1961. A chart is enclosed covering assessment year 2006-07 upto 2010-11 depicting the contract job income reflected in the P&L account, the TDS claim made by the assessee in the income tax return with the corresponding amount reflected in the TDS certificates. In all the years the contract job income is more in comparison to the amount reflected in the TDS certificates.

Hence, the addition of Rs.29,08,07,163/- is factually, legally not tenable and should be deleted."

In view of the above withdrawal of TDS on the ground that there is mismatch between receipt as 26AS and receipt as per Profit and Loss account may not be made."

3. After considering the submissions of the assessee, ld. PCIT observed that as a principle of matching, TDS claimed only on the revenue that has been offered for taxation. In this case, TDS has been made on the amount of Rs.51,14,99,819/- but the revenue was offered to tax only to the extent of Rs.25,05,98,794/- and the whole TDS amount was claimed on such

revenue. Since the AO has not verified the above claim of the assessee, he directed the AO to make fresh assessment on the issue discussed above and complete assessment after due verification.

4. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

“1. That having regard to the facts and circumstances of the case and in law, the assessment order passed by Id. AO u/s 143(3) is neither erroneous nor prejudicial to the interest of revenue and Ld. Pr. CIT (Central) erred in invoking the provisions of section 263 of the Income Tax Act and also erred in cancelling the order passed by Id. AO u/s 143(3) for fresh assessment without properly appreciating the facts.

1.1 The Ld. Pr. CIT (Central) has erred both on facts and in law in ignoring the fact that the issue raised by him in notice u/s 263 was before the Id. AO and as such the jurisdiction on this issues 263 cannot be assumed by him.

1.2 The order passed by Pr. CIT(Central) under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of no/lack of enquiry and the proceeding under Section 263 cannot be used for substituting opinion of the Id. A.O. by that of the Id. Pr. CIT(Central).

1.3 The Id. Pr. CIT (Central) erred both on facts and in law in cancelling the assessment with regard to disallowance u/s section 14A and with regard to disallowance of excess claim of TDS to the file of the Id. AO without properly appreciating the explanation of the assessee.”

5. At the time of hearing, Id. AR of the assessee submitted as under :-

“4. On the aforesaid facts, the broad contentions of the appellant are as under :

4.1 Contention No.1 : Learned PCIT while revising the order u/s. 263 cannot remand the matter to AO, he has to make addition by going into the merits of the case.

PCIT vs. V-Con Integrated Solutions Pct. Ltd. in SLP No.13205/2025 (copy handed over in Bench during course of hearing).

4.2 Contention No.2 : Where Assessing Office during assessment proceedings issued detailed questionnaire to assessee and the same was replied by assessee, it was not a case where no enquiry whatsoever had been conducted by Assessing Officer with respect to claims under consideration and, thus, revision order passed under section 263 was not sustainable, reliance is placed on following case laws:

- **Copy of order of Hon'ble ITAT Delhi in the case of Calcom Institute of Management Development Trading vs CIT in ITA No. 1751/Del/2024. 122-134**
- **Copy of Judgments of Hon'ble High Court of Delhi in the case of PCIT. vs Clix Finance India P. Ltd reported in 298 Taxman 217 (DEL) 135-141**
- **Copy of Judgments of Hon'ble High Court of Delhi in the case of PCIT. Vs. Trojan Developers (P.) Ltd reported in 297 Taxman 177 (DEL) 142-145**

4.3 Contention No. 3: Explanation to Section 14A is applicable prospectively i.e. from 01.04.2022 and as such, reliance placed by PCIT and applying the same retrospectively is untenable in law. Further, even if it is a case of no enquiry, the order passed by learned AO would not be erroneous, having regard to following judgments of jurisdictional high court's which have held the amendment to section 14A prospective i.e. from AY 2022-23 and the said judgments have been rendered prior to passing of the order by PCIT, which rather makes the order so passed by learned PCIT as erroneous being against the judicial mandate of jurisdictional high court

- Copy of judgment of Hon'ble High Court of Delhi in the case of PCIT vs Era Infrastructure (India) Ltd. in ITA No. 204/2022 (Pages 92 to 99 of PB).
- Copy of judgment of Hon'ble High Court of Delhi in the case of Cheminvest Ltd. vs CIT reported in 378 ITR 33 (Pages 86 to 91 of PB).

4.4 Contention No. 4: The issue of excess TDS was already gone into by learned AO during the course of assessment proceedings and even in preceding AY 2017-18 (as tabulated above), and it is an accepted fact that assessee being builder, follows POCM to book its Revenue and as such, receipts appearing in 26AS being TDS deducted by customers on payments being made, is not comparable with revenue shown in P&L Account. Reliance is placed on the order of Hon'ble ITAT Delhi in the case of Lloyd Insulation (India) Ltd. vs DCIT in ITA No. 2400/Del/2011 on the aforesaid proposition.

Learned AO after due application of mind and after calling for replies from assessee, accepted the explanation of assessee both in AY 2017-18 and 2018-19 both. It would not be out of place to mention that AY 2017-18 had attained finality as no action u/s.263 or 147 of the Act was ever taken by Revenue. Moreover, the reply dated 02.02.2024, filed by assessee in pursuance to show cause notice u/s. 263 of the Act for AY 2118-19, which was also to the same effect and has been arbitrarily brushed aside by learned PCIT while invoking jurisdiction under section 263 of the Act.”

6. On the other hand, ld. DR of the Revenue brought to our notice findings of the ld. PCIT at page 6 of the order and supported the findings of ld. PCIT who has referred to CBDT Circular with regard to section 14A and

with regard to excess claim of TDS, he relied on the detailed findings of ld. PCIT.

7. Considered the rival submissions and material placed on record. We observed that ld. PCIT on verification of the assessment record observed that the AO has not made any disallowance u/s 14A of the Act and certain mismatch of TDS claimed by the assessee. Without going into various contentions made by the assessee, we observed that it is settled position of law that during the year under consideration, when the assessee has not received any exempt income during the year no disallowance can be made. This issue under consideration is settled position of law by various Hon'ble High Courts and coordinate Benches.
8. Further instruction of CBDT No.5 dated 11.02.2014 was heavily relied by ld. PCIT. However, we observed that the Courts have already held that the CBDT Circular have no application when the assessee has not received any exempt income. Since it is settled position of law and Assessing Officer has taken a possible view, the ld. PCIT cannot impose his another possible view. Therefore, the issue under consideration is decided in favour of the assessee.
9. With regard to excess amount of TDS claimed by the assessee due to mismatch of turnover reported in Form 26AS with regard to above, we observed that assessee has filed tax audit report and the method adopted

by the assessee for recording the gross income in the case of housing project by regularly following the method of POCM. The assessee is following the said method consistently and the assessee has filed reconciliation of turnover before the AO during assessment proceedings. Since the assessee follows the method of POCM, there will be always a mismatch of TDS amount and the turnover declared by the assessee. The income declared by the assessee based on the percentage of completion, the assessee will declare the revenue on the basis of abovesaid method. The customers may remit the payment and deduct TDS which may not match the income declared by the assessee. Considering the method adopted regularly by it. In our considered view, ld. PCIT could have asked the assessee to submit the reconciliation of the above and decide the issue by himself instead of remanding the matter back to the AO. By merely remitting these issues back to the AO, the ld. PCIT has failed in his duty and mere initiation of proceedings u/s 263 is not enough, he has to give clear finding on the basis of prejudicial to the interest of Revenue. As held in the case of PCIT vs. V-Con Integrated Solutions Pvt. Ltd. (supra), it was held as under :-

“ The assessee does not have control over the pen of the Assessing Officer. Once the Assessing Officer carries out the investigation but does not make any addition, it can be taken that he accepts the plea and stand of the assessee.

In such cases, it would be wrong to say that the Revenue is remediless. The power under Section 263 of the Income Tax Act, 1961, can be exercised

by the Commissioner of Income Tax, but by going into the merits and making an addition, and not by way of a remand, recording that there was failure to investigate. There is a distinction between the failure or absence of investigation and a wrong decision/conclusion. A wrong decision/conclusion can be corrected by the Commissioner of Income Tax with a decision on merits and by making an addition or disallowance.

There may be cases where the Assessing Officer undertakes a superficial and random investigation that may justify a remit, albeit the Commissioner of Income Tax must record the abject failure and lapse on the part of the Assessing Officer to establish both the error and the prejudice caused to the Revenue.

Recording the aforesaid, the special leave petition is dismissed.”

10. Respectfully following the same, 263 order passed by the Id. PCIT is bad in law and further, even though, the assessment order is silent but the submissions of the assessee shows that the Assessing Officer has accepted the submissions and taken a possible view. Accordingly the order passed u/s 263 is quashed.
11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 30th day of June, 2025.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 30.06.2025

TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**