

IN THE INCOME TAX APPELLATE TRIBUNAL BENCH-RANCHI
VIRTUAL HEARING AT KOLKATA

**Before Shri Sonjoy Sarma, Judicial Member
and Shri Ratnesh Nandan Sahay, Accountant Member**

I.T.A. No.275/Ran/2023
Assessment Year: 2016-17

Shah Brothers, Chaibasa.....Appellant
Sadar Bazar, West Singhbhum,
Jharkhand-833201.
[PAN: AAZFS7498F]

vs.

ACIT, Central Circle-1, Ranchi.....Respondent

Appearances by:

Shri Devesh Poddar and R. R. Mittal, AR, appeared on behalf of the appellant.
Shri Khubchand T. Pandya, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 26, 2025
Date of pronouncing the order : July 07, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against an order dated 28.11.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. Brief facts of the case are that the assessee filed its return of income u/s 139 of the Act declaring total income of Rs.14,04,03,980/- for assessment year 2016-17. The assessment of the assessee was completed u/s 143(3) of the Act on 31.10.2018 accepting the said returned income. Subsequently, based on information received from DCIT, CC-1(3), Mumbai, it was alleged that the said assessee had claimed a bogus contract expenses of Rs.2,69,14,526/- in lieu of the bogus work order to M/s Pandhe Infracons Pvt. Ltd. during the F.Y 2015-16 without any actual work had been performed. The revenue relied upon search operation u/s 132 of the Act conducted on M/s

Pandhe Infracons Pvt. Ltd. and statements were recorded u/s 132(4) and 131 of the Act from key persons including Shri D. L. Pawar, Shri Ankur Pandhe, Shri Anil Kr. Kabra who admitted that transaction was accommodation entries and no actual work has been executed. Accordingly, proceedings u/s 147 of the Act were initiated and notice u/s 148 was issued to the assessee and the assessee filed reply in response to the said notice. However, the Assessing Officer disallowed the said amount of Rs.2,69,14,526/- with a view that the same was a bogus transaction.

3. Dissatisfied with the above order, the assessee preferred an appeal before the ld. CIT(A) where the ld. CIT(A) accepted the assessee's plea that the impugned transaction relating to assessment year 2015-16 not for 2016-17 and held that the expenditure of Rs.2,69,14,526/- was debited in the books for the F.Y 2015-16 and tax relating the said payment was also deposited, hence no disallowance was warranted in 2016-17. However, while doing so, the ld. CIT(A) directed the Assessing Officer to reopen the assessment for the assessment year 2015-16.

4. Aggrieved by the said order, the assessee filed the present appeal before this Tribunal against the direction to reopen the earlier assessment stating that the ld. CIT(A)'s power governed by section 251 of the Act permits him only to confirm, reduce, enhance or annul assessment order only for the year under appeal. The ld. CIT(A) has no authority to issue direction to reopen the assessment for other years. The ld. AR also stated that the assessee has never raised any ground relating to assessment year 2015-16 in the appeal, hence, the finding given by the ld. CIT(A) to reopen that year is beyond the jurisdiction and contrary to the principle of natural justice. He further stated that the statement of third parties i.e. Shri D. L. Pawar, Shri Ankur Pandhe, Shri Anil Kr. Kabra were never shared during the reassessment proceedings

and the assessee filed all the relevant details to support the genuineness of the transaction with M/s Pandhe Infracons Pvt. Ltd. Therefore, the action of the Assessing Officer and the ld. CIT(A) is bad in law and liable to be set aside. In this respect, the ld. AR relied on the decision of the Coordinate Bench in ITO vs. Sri Biswajit Chatterjee in ITA No.565/Kol/2013, wherein, it was held as under:

"10. Next issue raised by Revenue in ground No.3 is that Ld. CIT(A) erred in not issuing direction to the AO [u/s 150\(1\)](#) of the Act to reopen the assessment for those years in which the investment had been made by the assessee. The ITO Wd-1(2) Hgl. Vs. Sh. Biswajit Chatterjee Page 7 AO made the addition on account of undisclosed investment made by the assessee but Ld. CIT(A) deleted the addition as made by the AO on the ground that these investments were not made in the year under consideration. As per Ld. CIT(A) this investments were made in the earlier year. Accordingly, Ld. CIT(A) was of the view that the investments have not been made in the year under consideration. Therefore no addition on account of undisclosed investment can be made in the hands of the assessee.

11. Now the Revenue has agitated before us that Ld. CIT(A) erred in not giving direction to reopen the case of earlier years of the assessee in which investments were made. In this regard, we find that Ld. CIT(A) has been given power [u/s. 251](#) of the Act to confirm the order of AO reduce, enhance or annul assessment order under the provision of Act there is no power available to Ld. CIT(A) to give direction to AO for reopening the case of other years. [The Income Tax Act](#) provides different schemes wherein the AO is empowered to assess or re-assess the income which has escaped assessment. So at the most, if the Revenue wishes to tax the escapement of income then it has followed the scheme provided under the Act. The relevant provisions for taxing the escape income are given [u/s 147/263](#) of the Act. In holding so, we find support and guidance from the judgment of Hon'ble Supreme Court in the case of ITO vs. Murlidhar Bhaghubabu reported in 52 ITR 335 (SC). The relevant extract of the judgment is reproduced below:-

"[Section 33\(4\)](#) of 1922 Act only refers to a finding or direction made by an appellate authority and does not itself confer any power on an appellate authority to make a finding or direction. Indeed, [section 34](#) of 1922 Act deals with entirely a different aspect, that of empowering an ITO to bring to assessment escaped income, and has no concern with the powers of an appellate authority. The provision which deals with the powers of an appellate authority is [section 31](#) of 1922 Act."

Respectfully following the judgment of Hon'ble Supreme Court in the case of Murlidhar Bhaghubabu (supra) we conclude that Ld. CIT(A) has no power under the provision of law for giving any direction to AO for reopening of assessment. The appeal before Ld. CIT(A) is confined to the particular assessment year which is before him. Thus, in view of the above proposition, ITO Wd-1(2) Hgl. Vs. Sh. Biswajit Chatterjee Page 8 we dismiss the ground of Revenue's appeal. Consequently, Revenue's ground is dismissed.

12. In the result, Revenue's appeal stands allowed partly for statistical purpose.”

5. On the other hand, the ld. DR supported the decisions rendered by the authorities below.

6. We, after hearing of both the parties and perusing the materials available on record, find that ld. CIT(A)'s power is to govern by section 251 of the Act which permits him only to confirm, reduce, enhance or annul assessment order only for the year under appeal and the direction to reopen the earlier assessment, the ld. CIT(A) has no authority to issue direction to reopen the assessment for other years. We note that the assessee has never raised any ground relating to assessment year 2015-16 in appeal, therefore, the finding given by the ld. CIT(A) to reopen is beyond the jurisdiction and contrary to the principle of natural justice. Moreover, the assessee filed all the relevant details to support the genuineness of the transaction with M/s Pandhe Infracons Pvt. Ltd. In this respect, we rely on the decision of the Coordinate Bench in ITO vs. Sri Biswajit Chatterjee (supra). In view of the above, the impugned direction given by the ld. CIT(A) for reopening the case for assessment year 2015-16 is set aside.

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

Kolkata, the 7th July, 2025.

Sd/-
[Ratnesh Nandan Sahay]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 07.07.2025.

RS

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches