IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, JM]

I.T.A. Nos. 487 to 489/Kol/2025
Assessment Years: 2014-15 to 2016-17
&
I.T.A No. 490/Kol/2025
Assessment Year : 2018-19

Sushil Mitruka G-208, City Centre, Office Block, P.O. Matigara-734010, Siliguri, Darjeeling (PAN: ACCPA9340F)	Vs.	Pr. CIT, Siliguri
Appellant		Respondent

Date of conclusion of Hearing	19.05.2025
Date of Pronouncement	10.07.2025
For the Appellant	Shri S. K. Tulsiyan, Advocate
For the Respondent	Shri Madanappa Raghuvir, CIT DR

ORDER

Per Shri Rajesh Kumar, AM

The captioned four appeals filed by the assessee are against the separate revisionary orders passed by the Ld. Pr. CIT, Siliguri all dated 24.01.2024 for AYs 2014-15 to 2016-17 and 2018-19 arising out of assessment orders passed u/s.147/144 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") by Assessing Officers.

2. Since the issue in all the appeals are common and relate to the same assessee, therefore, all these appeals are being clubbed and decided together for the sake of brevity and convenience. We first of all take the ITA No. 487/Kol/2025 for AY 2014-15 as a lead case.

3. The issue raised in ground no. 1 is against the order of Ld. Pr. CIT setting aside the order framed u/s. 143(3) of the Act dated 26.09.2022 by validly exercising the jurisdiction u/s. 263 of the Act without the pre-requisite twin conditions being satisfied.

4. Facts in brief are that the assessee is deriving income by way of director's remuneration, interest and salary from partnership firm, capital gain, house property and

other sources. The case of the assessee was reopened u/s. 147 of the Act by issuing notice u/s. 148 on 30.03.2021 which was complied with by the assessee by filing the return of income on 30.04.2021 declaring total income at Rs.33,84,970/-. During the assessment proceeding, the Assessing Officer found that assessee has spent huge money for the construction of the house property at Uttorayan Township, Matigara, Siliguri and accordingly, a reference was made to the DVO for the valuation of residential property u/s. 142A of the Act. The DVO submitted the report on 26.07.2022 valuing the property at lesser value as compared to the cost of construction declared by the assessee. For the sake of ready reference, we extract below the money spent year wise by the assessee and assessed by the DVO:

AY	Value reported in Books (In Rs.)	Value assessed by DVO (In Rs.)
2014-15	Rs.79,76,789/-	Rs.37,53,227/-
2015-16	Rs.1,23,77,989/-	Rs.58,08,706/-
2016-17	Rs.4,48,48,360/-	Rs.2,09,90,919/-

5. The Assessing Officer during the course of assessment proceeding issued notices nine times, which were duly responded by the assessee by furnishing details and evidences qua the construction expenses along with the sources thereof. The assessee borrowed money from Indian bank for the construction of house and total borrowing during FYs 2012-13 to 2015-16 were Rs. 6,49,09,345/-, the details whereof are extracted as under:

Financial Year	Home Loan Account No.	Date	Amount Received	Received In	Page No. (paper book 2)
2012-13	Axis 70536	05.04.2012	37,50,000.00	Indian Bank	87
2012-13	Axis 70536	29.08.2012	18,75,000.00	Indian Bank	88
2012-13	Axis 70536	03.10.2012	11,00,000.00	Indian Bank	88
2012-13	Axis 70536	30.01.2013	4,00,000.00	Indian Bank	88
2013-14	Axis 70536	04.03.2014	46,55,000.00	Indian Bank	90
2014-15	Axis 70536	10.01.2015	6,20,000.00	Indian Bank	79,91
2014-15	Axis 258873	31.01.2015	90,09,345.00	Indian Bank	81,92a
2015-16	ICICI 2386436	25.05.2015	1,75,00,000.00	Indian Bank	30,34,35
2015-16	ICICI 2347001	15.09.2015	2,60,00,000.00	Indian Bank	41,42, 46
			6,49,09,345.00		

6. The assessee also met the construction expenses partly out of own sources as is clear from the copy of Balance Sheet filed at page 11 of the paper book I. The Assessing Officer ,after taking into account the explanation/evidences/details filed by the assessee, added two amounts i) on account of cash deposits in Indian Bank amounting to Rs.67,30,100/- by treating the same as income from undisclosed sources and utilized for the purpose of acquiring new assets and thus added to the income u/s 68 of the Act and ii) in respect of the valuation made by the DVO at Rs.37,53,227/-. The said order was challenged before the Ld. CIT(A) and was subjudice. In the meantime, the Ld. Pr. CIT after perusing the assessment records observed that assessee has not given proper explanation regarding huge cash deposits in the bank account and also referred to the addition made by the Assessing Officer in the assessment framed u/s. 147 r.w.s. 144B of the Act dated 26.09.2012. According to the Ld. Pr. CIT, the assessee has claimed to have spent during the year Rs.79,76,789/- on the construction expenses and source was stated to be cash available with him. He further noted that no payments for construction expenses were made through banking channel. The Ld. Pr. CIT also noted that the valuation of expenditure as submitted by the DVO as per report was only Rs.37,53,227/-, therefore, the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue and accordingly, issued show cause notice u/s. 263 of the Act as to why the assessment should not be revised. Finally, after taking into account the reply of the assessee, the assessment was revised vide order dated 24.01.2025 directing the Assessing Officer to conduct proper enquiry/verification of this issue before arriving at the final decision on the ground that the said order is erroneous and prejudicial to the interest of the revenue.

7. The Ld. AR submitted before us that in this case, the additions had already been made by the Assessing Officer in the assessment framed u/s. 143(3)/147 read with section 144B of the Act dated 26.09.2022 wherein the Assessing Officer made detailed enquiry and investigation and on page no. 2 the AO stated that nine opportunities were granted to the assessee and on as many as six occasions the assessee filed the details/explanation as sought by the Assessing Officer. The Assessing Officer, after taking into consideration the DVO's report, made the addition to the income of the assessee equal to the amount of construction

expenses assessed by the DVO thereby adding Rs.37,53,227/- besides making other addition u/s. 68 of Rs.67,13,100/- which according to the Assessing Officer was unexplained cash deposits in the bank account of the assessee, the source of which was not explained. The Ld. AR, therefore, prayed that the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue as the Assessing Officer has made two additions qua the unexplained money deposited by the assessee into the bank account and the value of property assessed by the DVO. The Ld. AR submitted that there is no loss or detriment caused to the department but rather huge prejudice was suffered by the assessee by the assessment framed by the Assessing Officer by making huge additions despite the same being explained by the assessee. The Ld. AR submitted that the assessee is a person of sufficient means and resources as is apparent from the copies of Balance Sheets and other details qua the investments by the assessee over a period of time which are available in the paper book no. 1 and accordingly prayed that the order passed by the Ld. Pr. CIT is without jurisdiction and is invalid. The Ld. AR submitted that the jurisdictional u/s. 263 of the Act is only available if the twin conditions as provided in section 263 of the Act i.e. first the assessment order has to be erroneous and second it has to be prejudicial to the interest of the revenue. The Ld. AR submitted that the Ld. Pr. CIT has not pointed out as to how the order passed by the Assessing Officer is erroneous and thereafter what prejudice is caused to the revenue as the Assessing Officer has made full additions even in respect of the money raised by the assessee from the bank in order to meet the construction expenses besides adding the assessed value of construction expenses as per DVO's report to the income of the assessee. The Ld. AR submitted that the amount shown by the assessee to have been spent during AY 2014-15 for construction purposes was Rs.79,76,784/- whereas the value assessed by the DVO was only Rs.37,53,227/-. The ld. AR, therefore, prayed that the twin conditions provided in section 263 of the Act are not satisfied and, therefore, the jurisdiction u/s. 263 of the Act has been invoked invalidly which is against the ratio laid down by the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) and another decision of the Hon'ble Supreme Court in the case of CIT Vs. Max India Ltd. (2007) 295 ITR 282 (SC).

8. The Ld. AR, thereafter, stated that investments made by the assessee in the property was duly shown in the books of account and same has not disputed by the Assessing Officer or the Ld. Pr. CIT and also the investment shown in the books of account on the construction is far more than the valuation assessed by the DVO. The Ld. AR submitted that the Ld. Pr. CIT did not point out as to how the enquiry made by the Assessing Officer is inadequate and he has simply set aside the assessment to the file of the Assessing Officer for the sole reason that the view of the Assessing Officer and the DVO are different which is not permissible under the Act. The Ld. AR submitted that where the view of the Ld. Pr. CIT is different from the Assessing Officer then the Ld. Pr. CIT is not permitted to substitute his own view because he disagrees with the view taken by the Assessing Officer to justify the proceeding u/s. 263 of the Act. The Ld. AR in defense of his arguments relied on the decision of J. L. Morison (India) Ltd. Vs. ACIT (ITA No. 786/Kol/2010), PCIT Vs. Britannia Industries Ltd. 146 taxmann.com 246, CIT Vs. Sunbeam Auto Ltd. [2021] 332 ITR 1067 (Del.). The Ld. AR, therefore, prayed that the order passed u/s. 263 of the Act may kindly be quashed.

9. The Ld. DR, on the other hand, relied heavily on the order of Ld. Pr. CIT by submitting that no prejudice would be caused to the assessee by the setting aside of the assessment as the assessee would be given sufficient opportunity to respond in the set aside proceedings. Therefore, the objection of the assessee on this issue is premature and deserved to be dismissed. The Ld. DR further submitted that the assessment in this case was revised after the Ld. Pr. CIT found that the assessee has not explained the deposit of cash into the bank account and, therefore, revision is fully justified and is as per law.

10. After hearing the rival contentions and perusing the material available on record, we find that in this case, the assessee has constructed the house property over a period of time commencing from FY 2014-15 to 2015-16 and year wise expenses were furnished before the Assessing Officer during assessment proceedings. The Assessing Officer after considering the expenses and other details furnished by the assessee referred the issue of assessing the construction cost to the DVO u/s. 142A and DVO assessed the value at a lesser amount than declared by the Assessee which has been extracted hereinabove. We note that the value assessed by the DVO is far less than the construction expenses declared by the assessee. We also note that the construction expenses were made substantially out of the loan taken from Indian Bank and the balance were met out of assessee's own sources. The assessee is deriving income by way of director's remuneration, interest and salary from partnership firm, capital gain, house property and other sources. The Assessing Officer framed the assessment u/s. 147 r.w.s. 144B of the Act by making two additions – (i) the value assessed by the DVO Rs.37,53,227/- and second the amount of cash deposits in the bank account which according to the AO remained unexplained amounting to Rs.67,30,100/-. Thereafter, the Ld. Pr. CIT upon perusal of the assessment record observed that the assessee has claimed to have spend on construction expenses a sum of Rs.79,76,789/- during the year under consideration on construction of the house whereas cash available with him was not explained satisfactorily. The Ld. Pr. CIT further noted that the actual expenses as per the DVO's report were Rs.37,53,227/- whereas the expenses show by the assessee to be incurred on the construction during the year were much more than that. Finally, the Ld. Pr. CIT observed that the Assessing Officer has only made part addition due to lack of proper enquiries/verification on the issue of cash expenditure of Rs.79,76,789/-. We observe from the assessment

order that assessee has declared Rs.79,76,789/- 0n the construction expenses during the impugned financial year whereas the DVO has assessed only Rs.37,57,227/- which is much lower than the amount of expenses declared by the assessee. Moreover, the Assessing Officer has made two additions one is Rs.67,33,100/- towards unexplained cash deposit in the bank account and second in respect of the value as assessed by DVO for construction during the year. Therefore, in our considered opinion, the order passed by the Assessing Officer after making the detailed enquiries and taking in consideration the evidences filed by the assessee is neither erroneous nor prejudicial to the interest of the revenue. We are unable to understand as to why the order is erroneous and what prejudice is caused to the revenue. In our opinion, the assessment has been revised by the Ld. Pr. CIT without giving any finding as to how the order is erroneous and prejudicial to the interest of the revenue. In our opinion, the said revision by the Ld. Pr. CIT without giving any concrete finding as to the assessment order being erroneous and prejudicial to the interest of the revenue is invalid and cannot be sustained. The case of the assessee finds support from the decision of Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. (Supra) wherein it has been held that the twin satisfaction of conditions as provided u/s. 263 of the Act is mandatory and even if the one of the two conditions is satisfied, the jurisdiction is not available to the Ld. Pr. CIT u/s. 263 of the Act. The relevant portion of the decision is extracted as under:

> *"A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue.*
>
> *The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the Income-tax*

Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act.

> *"The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."*

11. Similarly, the Hon'ble Supreme Court in the case of CIT Vs. Max India Ltd. (supra) has held as under:

> *"The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."*

12. Moreover, the Assessing Officer has conducted enquiry into the issue after calling for details/information from the assessee, which were duly furnished by the assessee and examined/ considered by the AO and only thereafter, after calling for the DVO's report on the issue of valuation of property, the Assessing Officer took a possible view on the issue. Therefore, it is not open to the Ld. Pr. CIT to substitute his own view in place of the view taken by the Assessing Officer by resorting to revisionary proceeding u/s. 263 of the Act unless the view taken by the Assessing Officer is unsustainable in law or is contrary to the facts on record. The case of the assessee finds support from the decision of Coordinate Bench in the case of J. L. Morrison (India) Ltd. (supra) which has been upheld by the Hon'ble High Court vide its decision dated 15.05.2014 reported in [2014] 46 taxmann.com 215 (Cal) wherein the Hon'ble Court has held as under:

> *"'If the Assessing Officer has taken a possible view, it cannot be said that the view taken by him is erroneous nor the order of the Assessing Officer in that case can be set aside in revision. It has to be shown unmistakably that the order of the Assessing Officer is unsustainable. Anything short of that would not clothe the Commissioner with jurisdiction to exercise power under section 263."*

13. Similarly, Bombay High Court has held in the case of CIT Vs. Sunbeam Auto Ltd. (supra) that where the Assessing Officer has made enquiry which may be inadequate but would not give any occasion to the Ld. Pr. CIT to pass order u/s. 263 merely because he has a different opinion in the matter. The Hon'ble Court while deciding the case as held as under:

> *"The Assessing Officer in the assessment order is not required to give a detailed reason in respect of each and every item of deduction, etc. Whether there was application of mind before allowing the expenditure in question has to be seen. If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Income-tax Act, 1961, merely because he has a different opinion in the matter. It is only in cases of lack of inquiry that such a course of action would be open."*

14. Similarly, the Hon'ble Gujarat High Court in the case of CIT Vs. R. K. Construction Co. [2009] 213 ITR 0065 (Guj.) while dismissing the appeal of the revenue has held as under:

> *"since all the necessary details were furnished to the Assessing Officer, there was no reason for the Commissioner to invoke the revisional jurisdiction under section 263 of the Act. The Assessing Officer had taken a particular view on the basis of the evidence produced before him. On the basis of the evidence before the Assessing Officer and materials which were collected by the Commissioner in revisional proceedings, the Commissioner had taken a different view. However. in the revisional proceedings under section 263, it was not open (or the Commissioner to take such a different view. There was nothing on record to suggest that the view taken by the Assessing Officer was unsustainable in law."*

15. Moreover, we observe that the Pr. CIT has not given any concrete finding on the basis of the facts before him as to how the order of the Assessing Officer is erroneous and prejudicial to the interest of the revenue as in the present case, the Assessing Officer has added the amount estimated by the DVO to be spent on the construction of the house

property and also made addition of Rs.67,33,100/- towards cash deposited in the bank account of the assessee whereas the Ld. Pr. CIT has stated that the Assessing Officer has added lesser amount by deducting the total cash expenditure shown by the assessee on the construction of the house during the impugned year of Rs.79,76,789/- and reducing therefrom the value assessed by the DVO of Rs.37,53,227/- and recorded a wrong finding that remaining Rs.42,23,562/- has to be added to the income of the assessee. Therefore, the finding given by the Ld. Pr. CIT is wrong and cannot be sustained. Considering the facts of the case and in the light of the aforesaid decisions, we are inclined to quash the revisionary proceedings u/s. 263 of the Act and also the consequent order passed thereto.

ITA Nos. 488 & 489/Kol/2025 for AYs 2015-16 & 2016-17

16. The issue raised in all these appeals is identical to one as decided by us supra in ITA No. 487/Kol/2025 for AY 2014-15 where we have quashed the revisionary order passed u/s. 263 of the Act. Therefore, our decision in AY 2014-15 would, mutatis mutandis, apply to these appeals as well and accordingly we quash the revisionary proceedings as well as the consequent orders passed by ld. Pr. CIT.

ITA No. 490/Kol/2025 for AY:2018-19

17. The issue raised in ground no. 1 is as under:

> *"That the learned PCIT erred in setting aside the order passed u/s. 143(3) of the Act dated 26.09.2022 when the pre-requisite of twin conditions, being order erroneous and prejudicial to the interest of the revenue are not met in the present case."*

18. The facts of the assessee in the present assessment year are substantially similar as discussed in ITA No. 487/Kol/2025 for AY 2014-19. In this case, the Assessing Officer passed the assessment vide order

dated 26.09.2022 u/s. 147 read with section 144B of the Act assessing the total income at Rs.96,26,420/- by making an addition of Rs.59,58,000/- in respect of the unexplained cash deposit into the bank account of the assessee. The Ld. Pr. CIT on perusal of the assessment record observed that assessee has shown construction expenses of Rs.31,01,781/- in the cash flow statement which has not been examined by the Assessing Officer during the assessment proceeding and due to lack of proper verification/enquiries the assessment order is rendered erroneous and prejudicial to the interest of the revenue and issued notice u/s. 263 of the Act which was duly replied by the assessee. The assessee submitted before the Ld. Pr. CIT that during the year no expenses were incurred on the construction of the house and the construction was completed on or before 31.03.2017. The assessee submitted that the details of construction expenses incurred over the period of time before the AO. The assessee submitted that land and building cost had been shown in the Balance Sheet at Rs.7,59,00,000/- in respect of house at Uttorayan Township as on 31.3.2017 and was being carried forward since then. The assessee submitted that the report of cost of construction dated 28.02.2022 as obtained from the registered valuer by the assessee also showed the construction costs till financial year 2016-17. It was also submitted that even the report of the DVO dated 26.07.2022 showed construction cost till the financial year 2016-17. The Ld. AR submitted before the Ld. Pr. CIT that no expenses have been incurred during the year under consideration as reported in the valuation from the registered valuer as well as per the report of the DVO. It was submitted that there was an addition of Rs.1,63,10,046/- in land and building in Sevoke Road in FY 2017-18 out of this sum Rs.31,01,780/- was incurred in cash. The Ld. Pr. CIT rejected the contention of the assessee and revised the assessment directing the

Assessing Officer to make the necessary enquiries after allowing reasonable opportunity of hearing to the assessee.

18. The ld. AR vehemently submitted before us that the order passed by the Ld. Pr. CIT is wrong and contrary to the facts on record. The Ld. AR submitted that even the valuation report of the assessee as well as the report given by the DVO testified that no expenses were incurred on the construction of the house property whereas as a matter-of-fact cash amounting to Rs.31,01,780/- was spent in respect of land and building at Sevoke Road. It is pertinent to state that the total expenditure on account of land and building was to the tune of Rs.1, 63,10,046/- which was shown in the balance sheet. Therefore, the revisionary jurisdiction was wrongly invoked by the ld. Pr. CIT by misconstruing the facts. Per Contra ld DR. Relied heavily on the order of Pr. CIT.

19. We have heard the rival contentions and perused the material available on record. We find that the only difference is in the year under consideration is that the assessee has not incurred any expenses for construction of the house property and the Ld. Pr. CIT by mis-appreciating the facts noted that Rs.31,01,780/- was incurred for construction of the house in cash whereas, as a matter of fact, the said amount was part of the total addition of Rs.1,63,10,046/- made in land and building at Sevoke Road during FY 2017-18. We note that the Assessing Officer has made proper enquiries and made the addition of Rs. 59,58,000/- on account of cash deposited into the bank account by the assessee. Therefore, we do not find any mistake in the assessment order which is prejudicial to the interest of the revenue. So far as the various case laws are concerned, we have already discussed them in ITA No. 487/Kol/2025 which are also applicable to the instant assessment year. Accordingly, we quash the

revisionary proceeding as well as the consequent order framed u/s. 263 of the Act.

20. In the result, appeal of the assessee stands allowed.

Order is pronounced in the open court on 10th July, 2025

Sd/-	Sd/-
(Pradip Kumar Choubey)	(Rajesh Kumar)
Judicial Member	Accountant Member

Dated: 10th July, 2025
JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–Shri Sushil Mitruka
2. Respondent – Pr. CIT
3. Assessing Officer
4. DR, ITAT, Kolkata,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata