

**THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA Nos.1868 & 1869/Del/2025
(Assessment Years: 2018-19 & 2020-21)**

Ambience Developers and Infrastructure Pvt. Ltd. L-4, Green Park Exten. Delhi – 110016	Vs.	PCIT (Central) Room No. 341, 2 nd Floor, ARA Centre, Jhandewalan Delhi – 110055
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAECA6894P		
Appellant	..	Respondent

Appellant by :	Sh. Mahesh Kumar CA & Sh. Meenal Goyal, CA Ms. Nidhi Mangla Adv. & Ms. Tanya, Adv.
Respondent by :	Sh. Mahesh Kumar, CIT, DR

Date of Hearing	19.08.2025
Date of Pronouncement	12.09.2025

ORDER

PER MADHUMITA ROY, JM:

Both the appeals filed by the assessee are directed against the orders passed by the Ld. PCIT(Central)-2, Delhi both dated 29.02.2024 under Section 263 of the Income Tax Act, 1962 (hereinafter referred to as ‘the Act’) arising out of the Assessment Orders dated 03.08.2021 &

18.04.2022 passed by the ACIT, Central Circle 20, Delhi under Section 143(3) of the Act, for Assessment Years 2018-19 & 2020-21 respectively.

2. Both the appeals are found to be barred by limitation for 332 & 330 days respectively, in support of which an application for condonation of delay in each of the appeals preferred by the assessee has been filed before us.

3. In fact, at the first instance the assessee initially assailed the revisionary orders passed by the Ld. PCIT (Central) Delhi-2 under Section 263 of the Act both dated 29.02.2024 before the Hon'ble High Court of Delhi by filing Writ Petitions under Article 226 of the Constitution of India and the Hon'ble Delhi High Court by and under the order dated 26.03.2025 pleased to dispose of the Writ Petitions by granting liberty to the petitioner, the assessee before us, to avail the alternative efficacious statutory remedy by filing appeals before the Tribunal and thereafter the assessee could file the appeals before us. The explanation so rendered by the assessee in preferring the appeals late is thus, found to be justified. We further find that there is no prejudice caused to the respondent department in getting the appeals admitted by us and further that unless the appeals are admitted irreparable loss and injury would cause to the appellant. Hence, the delay is condoned and both the appeals are admitted for consideration on merit.

3. Since both the appeals preferred by the assessee are on identical issues, these are heard analogously and are being disposed of by a common order by taking ITA No.1868/Del/2025 for Assessment Year 2018-19 as a lead case.

ITA No. 1868/Del/2025 (AY: 2018-19)

4. The assessee before us is a real estate developer, filed its return of income on 29.10.2018 declaring loss as per normal provision from business or profession of Rs.19,52,51,093/- and income in terms of the provision of MAT of Rs.17,09,20,004/- which was processed under Section 143(1) of the Act. The case of the assessee was selected for complete scrutiny under CASS and notice under Section 143(2) dated 22.09.2019 was served upon the assessee followed by notices under Section 142(1) of the Act along with the questionnaire dated 09.12.2020 and 12.06.2021 directing the assessee to furnish the details/information/documents for the relevant assessment years in compliance thereto the assessee duly furnished the details. The same was examined/verified on test check basis and the return filed by the assessee has been accepted.

5. Thereafter a notice dated 07.02.2023 issued under the signature of the Ld. PCIT (Central) Delhi-2 was served upon the assessee initiating revisionary proceeding under Section 263 of the Act alleging the order of assessment dated 03.08.2021 under Section 143(3) of the Act accepting the returned loss of Rs.19,52,51,093/- for Assessment Year 2018-19 erroneous and prejudicial to the interest of revenue on account of incorrect categorization of business income as rental income, incorrect claim of interest expense against business income and wrongful claim of standard deduction made by the assessee. The assessee immediately thereafter, by and under a reply dated 06.03.2023 furnished the details and had drawn attention to the Ld. PCIT on the following certain facts by filing a further reply dated 26.12.2023:

- (i) The classification of rent from letting out of shops as “House property income” has been consistently accepted by the department in previous assessment years and there is no change of fact in the year under consideration; the assessee demands acceptance of the same.
- (ii) The proposed reclassification of the rental income from “House Property Income” as “business income” would cause prejudice to the interest of revenue on account of additional allowability of depreciation of building foregone as the said income was classified consistently as ‘income from house property’ and not disturbed by the department.
- (iii) The assessee has also raised objection against the initiation of revisionary proceeding under Section 263 of the Act as mere change of opinion in the absence of any material facts brought by the revenue or at all existing in the case of the assessee. In this regard, the judgment passed by the Hon’ble Apex Court in the case of CIT Vs. Calvinator of India Ltd., reported in (2020) 320 ITR 561 (SC) was relied upon.
- (iv) Non-satisfaction of the jurisdictional fact i.e. basic twin conditions envisaged under Section 263 of the Act in initiating revisionary proceeding against the assessee was not fulfilled.

6. However, such submissions made by the assessee supported by relevant documents were found to be not acceptable and the Ld. PCIT concluded the proceeding under Section 263 of the Act directing the Ld. AO to pass assessment order afresh on the issue of incorrect claim of

house property as already envisaged hereinabove upon considering the complete facts and circumstances of the case. Hence, the instant appeal before us.

7. Heard the rival submissions made by the respective parties and perused the relevant materials available on record. Before the Ld. PCIT the assessee by and under the reply dated 22.12.2023 submitted as follows:

“That vide show cause notice, your honour is proposing to take action under the above mentioned provisions of the Act against the captioned assessee with regards to subject assessment year (AY) i.e. 2018-19. The assessee, however, unequivocally objects to the said action, as the same is contrary to the settled law (infra) and based on an erroneous understanding/finding of material facts, as further detailed below.

A. CLASSIFICATION OF RENTAL INCOME UNDER HEAD "INCOME FROM HOUSE PROPERTY"

- (i) Here your honour has proposed to treat the income from House Property, as consistently declared by the assessee, as income from business and objecting to the statutory deduction claimed by the assessee u/s. 24(a) of the Act amounting to Rs. 57,81,40,137/-, while allowing the expenses amounting to Rs. 13,68,61,227/ - as deductible business expenses i.e. difference between statutory deduction and the allowable expenses to tune of Rs. 44,12,78,910/-. In this connection, we would like to state that the said proposition will actually result in the loss of revenue because in such case the assessee will also be entitled to depreciation allowance amounting to Rs. 60,39,49,813/-, which is much more than the statutory allowance proposed to disallowed to the assessee.
- (ii) That the above practice of treating this rental income as income from house property has been accepted by the department in all previous years, and in this regards your kind attention is invited to the binding judgment of Hon'ble Supreme Court in the case of CIT v. Radhasoami Satsang [1992] 193 ITR 321 (SC) and Parashram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC), wherein it has been held that the department is bound to follow the rule of consistency and cannot abruptly change its stand so

taken in previous years in a different year, where the material facts do not change, as is the case of the assessee.

- (iii) Furthermore, the above stated law at the very threshold requires that the order of the Ld. A.O. be erroneous as well as prejudicial to the interest of revenue before jurisdiction u/s. 263 can be lawfully invoked. As has been submitted above, the very proposed action itself will be prejudicial to the interest of the revenue since the assessee will be entitled to a greater deduction against the taxable income and result in loss to the exchequer.
- (iv) Moreover the view taken in the above matter by the Ld. A.O., consistent with the view taken in the previous years, is correct and error free. Even if your goodself's takes an alternative view to that of the Ld.AO, the same still cannot justify lawful action u/s. 263 of the Act vide Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC).
- (v) It is respectfully further submitted that even a debatable or a plausible view cannot lawfully justify the proposed revision action u/s. 263 of the Act, as has been held in plethora of cases including most recent judgment by the Hon'ble High Court of Delhi in PCIT v. M/s. Brahma Centre Development Put. Ltd. in ITA No. 116 and 118 of 2021 dated 05.07.2021.

B. DEDUCTION OF FINANCE COST AS BUSINESS EXPENSES

- (i) That vide show cause notice, your honour is of the view that interest expenses incurred by the assessee amounting to Rs. 87.78 Crores out of the total finance cost of Rs. 140,21,11,289 / - should be capitalized against "Non-Current Investment/Other Investment" and not be deducted as a business expenses under the head 'Profit and Gains from business and profession', as has been done by the assessee in the subject AY and correctly allowed by the Ld. A.O. vide assessment order in question.
- (ii) It is respectfully submitted in this regard that your honours view is based on a patently incorrect understanding/finding of the material facts, since the said finance cost and interest incurred has been for the purposes of only making investments and earning return in the form of profits generated therefrom.
- (iii) That your honour has failed to understand and appreciate the fact that this investment of the assessee does not require the assessee to construct or develop any capital asset, rather it is the concerned counter party to such investment which is directly responsible for constructing and developing such assets (termed as "residential and commercial projects").
- (iv) To clarify further, the assessee's investment is only limited to the extent of investing the said investment sums by transferring the

same to these counter parties as per agreement, where the latter counter party undertakes the construction and development works in the said projects privately and at its own risk etc. The assessee is only entitled to the profits, if any, generated from the completed projects in accordance with the relevant agreements between the said parties.

- (v) That the Ld. A.O. after confronting the assessee during assessment proceedings on the above issue, and after receiving the assessee's detailed reply as summarized above, correctly took the view that the said finance cost incurred was for the purposes of business and interest incurred deductible u/s. 36(1)(iii) of the Act.
- (vi) It is also an admitted fact that the Ld. A.O. conducted inquiry into the above issue and after duly applying his mind and verifying the facts as submitted by the assessee took the correct view as, explained above. This undisputed factual position itself makes the proposed revisionary proceedings patently contrary to settled law vide CIT v. Sunbeam Auto Ltd. 332 ITR 167, wherein the Hon'ble Jurisdictional High Court has held that even if there was any inquiry, which may even inadequate, that would not, by itself, empower the concerned authority u/s. 263 of the Act merely because the said authority has a different opinion in the matter or the issue, as your honour vide present show cause notice seeks to effect. This settled position of the law has been reiterated by the Hon'ble High Court of Delhi in PCIT v. M/s. Brahma Centre Development Pot. Ltd. (supra) in the following manner.

“10. The standard to be adopted while dealing with the issue as to whether or not an AO has carried out an enquiry or verification, all that the Court is required to ascertain is as to whether the AO applied his mind.

10.1. The fact that the AO has not given reasons in the assessment order is not indicative, always, of whether or not he has applied his mind. Therefore, scrutiny of the record, is necessary and while scrutinising the record the Court has to keep in mind the difference between lack of enquiry and perceived inadequacy in enquiry. Inadequacy in conduct of enquiry cannot be the reason based on which powers under Section 263 of the Act can be invoked to interdict an assessment order.”

(underlining supplied)

- (vii) Your honour's kind attention is also drawn to a recent judgment of the Hon'ble High Court of Bombay in PCIT v. Shivshahi Punarvasan Prkalp Ltd. vide ITA no. 397 of 2018 dated 05.08.2022, wherein the Hon'ble High Court has held that the

concerned Commissioner could not have imposed or substituted his opinion on the view taken by the A.O., to say that the subject assessment order was erroneous and prejudicial to the interest of the revenue (relevant excerpt reproduced below):

"24. We are supported by the view of the Apex Court in the case of Commissioner of Income-Tax (Central), Ludhiana v/s. Max India Ltd. (supra) where it has been observed that 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 order erroneous and prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law. Paragraph 2 of the said decision is apt and is quoted as under:-

"2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under section 263 has to be read in conjunction with the expression "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 interest of the revenue. For example, when the 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 interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. ..."

(emphasis supplied)

25. This Court in case of Commissioner of Income-Tax v/s. M/s. Shreepati Holdings & Finance Pvt. Ltd. (supra) while striking down an order under Section 263 has observed in paragraph 6 as under :-

"6. We find that that there is no prescribed formula under Section 88E of the Act to determine the quantum of the rebate thereunder. Therefore the same has to be computed on a reasonable and scientific manner by the Cer. Further the more order Har la Lida wherein this Court held that the order cannot be held to be erroneous merely because according to the CIT, the order should have been written more elaborately or for substituting the view of the Assessing Officer with that of the CIT. The Court held that merely because the CIT B. D. Prithiani itxa-397.18.doc had a different view from that reached by the Assessing Officer would not by itself make the view of the Assessing Officer

erroneous. To be an erroneous order it must be in breach of law. It is axiomatic that jurisdiction under Section 263 of the Act can only be exercised on cumulative satisfaction of the twin conditions viz. Of the order being erroneous in law and the order being prejudicial to the interest of the revenue. Thus in this case, one of the two conditions precedent to exercise jurisdiction under Section 263 of the Act viz. Order being erroneous in law is not satisfied."

(emphasis supplied)

26. In the case of Commissioner of Income-Tax v/s. Chandan Magraj Parmar (supra) this Court has observed as under :-

"7. When it is not disputed that the land concerned would not fall under the definition of capital asset, the question of any capital gains arising also will not arise. Moreover, we also find that the ITAT has come to a factual finding that the AO has raised queries with regard to the claim of capital gain on transfer of land, Respondent vide its reply dated 31/01/2014 furnished the details in respect of distance of agricultural land from municipal limits, record of population as per last census and the AO after considering the reply of Respondent, accepted the claim of Respondent. The ITAT has given a finding that the claim of capital gain was accepted by AO after necessary inquiry and the order under Section 143(3) of the Act was passed. It is true that the AO has not passed any written detailed order while accepting the explanation of capital gains of Respondent but the fact is AO had raised queries and Respondent has given detailed reply means the AO has passed this order after making necessary inquiries. We agree with the view of the ITAT that the order of the AO cannot be branded as erroneous merely because the order does not contain the details which Principal Commissioner feels should have been included. The Principal Commissioner cannot decide how elaborate an order of the AO should be. Where the AO, during the scrutiny assessment proceedings, has raised a query which was answered by the B. D. Prithiani itxa-397.18 doc Assessee to the satisfaction of the AO but the same was not reflected in the AO by him, the Commissioner cannot conclude that no proper inquiry with respect to the issue was made by the AO and enable him to assume jurisdiction under Section 263 of the Act...."

(emphasis supplied)

27. Paragraph 7 of the decision in the case of Commissioner of Income-Tax v/s. M/s. Shreepati Holdings & Finance Put. Ltd. (supra) is also usefully quoted as under :-

"7. Moreover the CIT in exercise of powers under Section 263 of the Act directed the Assessing Officer to redetermine the rebate allowable under Section 88E of the Act after holding that the same needs more careful examination on the part of the Assessing Officer. This itself indication of the fact that this is not the case of lack of enquiry, but at the highest it can be a case of inadequate enquiry. It is settled position in law that inadequate enquiry by itself would not justify invoking the jurisdiction under Section 263 of the Act unless the order is erroneous. In the present facts, the CIT has not exercised jurisdiction under Section 263 of the Act on the ground that the order is erroneous. We find that the impugned order has correctly applied the principles laid down by this Court in Gabriel(I) Ltd. (supra). Accordingly, the question as formulated does not give rise to any substantial question of law. Thus not entertained."

(emphasis supplied)

28. In Commissioner of Income-Tax v/s. Future Corporate Resources Ltd. (supra), this Court observed that revision can only be exercised where no enquiry as required under law is carried out and in the case of inadequate enquiry by the Assessing Officer his order cannot be reviewed. Paragraph 6 of the said order is quoted as under :-

"6. Mr. Tejveer Singh in fairness agreed that the law is very clear and inasmuch as if there are two possible views and the Assessing Officer has chosen one of the possible views then there is no reason to exercise power of revision and revisional powers cannot be exercised for directing a full inquiry to find out if that view taken after an inquiry is erroneous. Moreover, the power of revision can only be exercised where no inquiry as required under the law is carried out and even in case of inadequate inquiry by the Assessing Officer, the order of the Assessing Officer could not be reviewed."

(emphasis supplied)

- (viii) Furthermore, given that the view taken by the Ld. A.O. is a correct view of the assessee's facts and circumstances, the same also results in the statutory ingredients of Section 263 of the Act not being satisfied i.e. the assessment order is erroneous (in addition to being prejudicial to the interest of revenue), failing which the proposed exercise of any revisionary powers thereunder would also be without lawful jurisdiction for the same reason. It also settled law vide Smt. Ujjam Bai v. State of Uttar Pradesh. [1963]1 S.C.R. 776 that an administrative/statutory authority cannot ®

exercise jurisdiction on such erroneous assumption of underlying collateral facts.

PRAYER

It is, therefore, most humbly and respectfully requested that the proposed action u/s. 263 of the Act against the assessee be dropped/withdrawn with immediate effect, and before any other adverse action, if any, is taken or contemplated against the assessee, the undersigned may please be given an opportunity of a fair hearing against the same.”

8. In fact on 06.03.2023 the assessee explained the revised tax treatment of income under ‘profit and gains of business or profession’ instead of ‘income from house property’ as directed to be treated by the Ld. PCIT in the year under consideration and also in the previous year would result loss of tax; the same would be prejudicial to the actual interest of revenue as contended by the assessee with the following details:

- “1. That for the subject AY the Assessee has claimed a loss of Rs.103.82 Crores under the head 'Profits and gains of business or profession', income of Rs.782.46 Crores under the head 'Income from house property' and income of Rs.21.82 Crores under the head 'Income from other sources'.
2. With regards to the 'Income from house property', income of Rs.282.46 Crores was claimed after deducting the following:
 - (i) Rs.22.59 Crores for House Tax paid,
 - (ii) Rs.57.81 Crores as Standard Deduction u/s. 24(a) of the Act, and
 - (ii) Rs.852.43 Crores for interest paid on borrowed funds.
 - (iii)
3. For the purpose of computing income under the head 'Profits and gains of business or profession', the above sum of Rs.52.43 Crores (interest paid on borrowed funds) and Rs.13.68 Crores pertaining to "other expenses" have been added back.
4. The sum of Rs.13.68 Crores pertaining to "other expenses" has been explained during the course of hearing as can be verified from records.
5. That after setting off losses via inter-head adjustment, the Gross Total Income declared is Rs.217.09 Crores, against which income tax of

Rs.83,64,77,064/-has been paid by the Assessee which is again a matter of record.

6. The classification of income earned from letting out of shops under the head 'Income from house property' by the Assessee has been accepted in various previous Assessment years. Since these orders have reached finality, this issue cannot now be revised/ reviewed in the garb of proposed revision u/s. 263 of the Act vide para 2.1.1 of SCN on a mere difference of opinion without any change in material facts, same being contrary to settled law vide Commissioner of Income Tax, Delhi v. Kelvinator of India Ltd. (2010) 2 SCC 723 and Radha Soami Satsang v. CIT 193 ITR 321 (SC).
7. Accordingly, the proposition vide para 2.1 to 2.1.2 of SCN that above income claimed/ classified under the head 'Income from house property' should have been instead classified under the head 'Profits and gains from business or profession' and the conclusion vide para 2.1.2 of SCN that additional standard deduction of 844.12 Crores has been claimed by the Assessee are perverse and legally unsustainable u/s. 263 of the Act, as this will result in loss of Rs. 364,77,064/-as tax to revenue. This change of opinion will actually be beneficial to Assessee and prejudicial to the interest of revenue. we are demonstrating a table showing the position of the proposed revision with original tax return.

Computation of Total Income		
Particular's	Proposed	Original
Income from Business of Professional (Chapter IV D)	-18272714	-1036179123
Ambience Developers and Infrastructure Private Limited.		
Profit as per profit and Loss A/c	170920004	170920004
Add:		
Depreciation Debited in P&L A/c	100054347	100054347
CSR Expenditure	3036000	3036000
Interest on borrowed fund house Property		524306922
Other Expenses relating to House Property Income		136861227
Total	<u>274010351</u>	<u>935178500</u>
Less:		
Interest income Considered Separately	18272714	18272714
Depreciation as per Chart u/s 32		
Allowable depreciation is Rs.603949813/- but restricted to Rs.274010351/- available profits.	<u>274010351</u>	<u>292283065</u>
Rental Income Considered separately	-	1953084909
	-	<u>1971357623</u>
	-	-1036179123
Total	<u>-18272714</u>	<u>-1036179123</u>
Income from Other Sources(Chapter IV F)	18272714	18272714
Interest on FDR	7267260	7267260
Interest from IT Refund	11005454	11005454
Total	<u>18272714</u>	<u>18272714</u>
Income From House Property(Chapter IV C)		824686731
Ambience Mall NH-8 Gurgaon (Haryana)		

Annual Lettable Value		0	
Rent Receivable		1953084909	
Higher of Above Annual Rental Value u/s 23			1953084909
Less:			
House Tax Paid		25951120	25951120
			1927133789
Less:			
Deduction u/s 24(a)		578140137	
Interest on Borrowed fund House Property		524306921	1102447058
			824686731
Gross Total Income		0	-193219678
Gross Total Income as -Ve figure is not allowed in return form.		0	0
Total Income		0	0
Round Off u/s 288A			
Calculation of MAT		170920004	170920004
Profit as per part II of Schedule III	236989913		236989913
Add:			
Income Tax u/s 40(a)(ai)	36477064		36477064
Total	273466977		273466977
Less:			
Deferred Tax Assets	102546973	102546973	102546973
		170920004	170920004
Tax Calculated @ 18.5% on Book Profit is more hence tax is calculated u/s 115JB			31620201
Tax Due u/s 115JB		31620201	3794424
Surcharge @12%		35414625	35414625
Health & Education Cess (HEC)@3%		1062439	1062439
T.D.S/T.C.S		36477064	36477064
		130496340	130496340
		-94019276	-94019276
Refundable (Round Off u/s 288B)		94019280	94019280

8. Therefore, the proposed reclassification of income from the head 'Income from house property' to the head 'Profits and gains from business or profession' as proposed vide SCN is prejudicial to the interests of the revenue as the same will result in loss of tax otherwise collected on the basis of Income Tax Return (ITR) filed by the Assessee and accepted vide scrutiny order.
9. The allegation of Assessee taking "additional standard deduction" vide para 2.1.2 is also self-contradictory to the proposed reclassification of income and consequential disallowance of any such deduction. We wish to bring to your notice that when the assessee was claiming the said income as income from house property the assessee was getting as statutory deduction u/s 24(a) amount to Rs.57,81,40,137/- but what the Assessee was adding back to its business income was (Interest and other expenses) totaling to Rs.66,11,68,148/-(Rs.52,43,06,921/- Plus Rs.13,68,61,227/-) and assessee was not claiming any depreciation on the said assets. If the deprecation is to be claimed after the income is classified as business income then Assessee will be entitled to a depreciation of Rs. 60,39,49,813/-, which means the Assessee will be

entitled to a total deduction of Rs.126,51,17,961/- (66,11,68,148 + Rs.60,39,49,813/-). We would like your goodself to appreciate that the Assessee will be entitled to an additional expenditure to the tune of Rs.74,08,11,040/- (1265117961 - 524306921/-), which is the difference between the total deduction claimed by the Assessee in original assessment as compared to the proposed revision. This itself shows that the proposed revision is prejudicial to the interest of revenue.

10. Additionally, the proposed re-classification will have no impact on the applicable Minimum Alternate Tax (MAT) provisions as applicable to the Assessee Company and the resultant refund of *940,19,280/- will remain unaltered.
 - B. Correct classification of inventory as non-current asset vide IND AS notified by MCA on February 2015 and claim of business expense of interest repayment via P&L Account not "erroneous" or "prejudicial to interests of revenue" (vide para 2.2 to 2.2.5 of SCN)
11. That the Assessee is a Private Company that is governed by the provisions of the Companies Act, 2013, which prescribes the manner in which the Assessee is to prepare its books of accounts or financial statements.
12. In February 2015, your attention is drawn to the amendment in IND AS Rules 2015, wherein a general instruction for preparation of Balance Sheet was issued, requiring the current assets will be those which expects to realize within 12 months. Copy of the said Instructions is hereby enclosed as Annexure-1.
13. In due compliance of the above law, the Assessee has accordingly classified its inventory as such and correctly claimed the interest repayment as business expense. As per the said general instructions referred above, there was only a change in the structure of the Balance Sheet and all these assets referred vide SCN were inventories and shown as stock-in-trade by the Assessee. Hence, the interest is rightly claimed as revenue expenditure. If the proposed revision is to be expected then again the Assessee will be at a gain because if these inventories are to be treated as non-current assets then there will be a huge drop in the figure of closing stock and net losses of the Assessee Company will increase, which is again a loss of revenue. Hence, on this account too the proposed revision is prejudicial to the interests of revenue.
14. Therefore, this correct compliance of law cannot be deemed "erroneous" or "prejudicial to the interests of the revenue" u/s. 263 of the Act nor can the Assessee be required to break the said law vide SCN.
 - C. Ownership of subject property not mandatory for claiming/classifying income under the head 'Income from house property' vide CIT v. Podar Cement (P) Ltd., (1997) 5 SCC 482 (vide para 2.3 to 2.3.2 of SCN).
15. That there is no error in the interpretation and application of Section 22 to the facts of the Assessee vide ITR and scrutiny order as the same is in

accordance with settled law i.e. Full Bench (3 Judges) decision of the Hon'ble Supreme Court in CIT v. Podar Cement (P) Ltd. (1997) 5 SCC 482, wherein the Hon'ble Court unequivocally held (and dismissed the interpretation/view as also presently expressed vide para 2.3 to 2.3.2 of SCN):

"In all these cases the scope of Section 22 of the Income Tax Act, 1961 (hereinafter called the 'Act') arises for consideration.

.....

We are conscious of the settled position that under the common law owner means a person who has not valid title legally conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act etc. But in the context of section 22 of the Income-tax Act having regard to the ground realities and further having regard to the object of the Income-tax Act, namely, 'to tax the income', we are of the view, owner' is a person who is entitled to receive income from the property in his own right.

In the light of the above narration and discussion, we do not think it necessary to discuss any more separately the submissions advanced across the bar."

16. With regards to the specific allegations/ propositions vide para 2.3.2 of SCN, it is requested that the above made submissions of the Assessee vide para 6 to 9 be perused in reply to the same.
17. Further, against the statement that similar additions were made and accepted by the Assessee, it is submitted that this is incorrect as explained in preceding paragraphs describing the legal position as above. D. Appropriate and adequate clarifications on "business loss" claimed (vide para 2.4 and 2.4.1 of SCN)
18. The allegation that the Assessee did not submit any clarification on the issue of "business loss" claimed for the subject AY during scrutiny assessment proceedings, despite being required to do so vide notice issued u/s.143(2) of the Act and that the same remained unverified, is ex facie incorrect and contrary to the records. The records of the concerned AO which reflects that all details were duly filed and verified by the AO.
19. Reliance is also placed on the decision of the Hon'ble Jurisdictional Delhi High Court in PCIT v. M/s. Brahma Centre Development Put. Ltd (ITA No.116&118/2021) dated 05.07.2021, wherein the Hon'ble High Court has clearly laid down mere "inadequacy" of enquiry by an Assessing Officer (AO) cannot be ground for validly exercising powers u/s. 263 of the Act:

"10. The standard to be adopted while dealing with the issue as to whether or not an AO has carried out an enquiry or verification, all that the Court is required to ascertain is as to whether the AO applied his mind.

10.1. The fact that the AO has not given reasons in the assessment order is not indicative, always, of whether or not he has applied his mind. Therefore, scrutiny of the record, is necessary and while scrutinising the record the Court has to keep in mind the difference between lack of enquiry and perceived inadequacy in enquiry. Inadequacy in conduct of enquiry cannot be the reason based on which powers under Section 263 of the Act can be invoked to interdict an assessment order."

(Emphasis Supplied)

20. Further, in CIT o Sunbeam Auto Ltd 332 ITR 167, the Hon'ble High Court of Delhi also held as under:

"12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". 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 Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open."

Non-satisfaction of jurisdictional facts (pre-conditions or "limbs") u/s. 263

It is settled law that for the lawful and valid exercise of power of revision u/s. 263 of the Act, your goodself must concurrently/ conjointly satisfy the two pre-conditions or "limbs" thereunder (vide Commissioner of Income- tax, Mumbai vs. Amitabh Bachchan [2016] 69 taxmann.com 170 (SC)) i.e. the scrutiny order is both:

- (i) erroneous,
- and

- (ii) prejudicial to the interest of revenue.
(iii)

As submitted above, the proposed revision vide para 2.1 to 2.1.2 will result in loss of tax (collected vide ITR and scrutiny order), whilst para 2.2 to 2.4.1 are based on patently erroneous interpretation of (settled) law by your goodself.

It is also settled law that when two views are possible and the AO has taken one view with which your goodself does not agree with, the scrutiny order cannot be treated as erroneous or prejudicial to the interest of the revenue, unless the view taken by the AO is unsustainable in law. In the present case, as submitted above, the view taken on the Assessee's facts vide scrutiny order is in accordance with settled law, thus, the correct and only view possible. Thus, the view proposed vide SCN by your goodself is ex facie incorrect and cannot supplant that of the AO via exercise of power u/s. 263 of the Act vide *Malabar Industrial Co., Ltd v. CIT (2000) 243 ITR 83 (SC)*:

"9. 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 ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO 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 ITO is unsustainable in law."

(Emphasis Supplied)

Therefore; since neither "limb" stands satisfied as ex facie self-evident vide SCN, any purported exercise of power of revision u/s. 263 as proposed vide SCN will be without lawful authority.

Prayer

In view of the aforementioned submissions, it is prayed that the proposed exercise of power of revision u/s. 263 of the Act by your good self be found legally unsustainable/ unwarranted and any adverse action taken (if any) pursuant to SCN be terminated with immediate effect along with the SCN.

Further, the Assessee hereby also reserves the right to make further detailed written submissions in support of the present submissions and against the SCN/ proposed action u/s. 263 of the Act.

In case any adverse inference is drawn against the above submissions it is further prayed that an opportunity of a personal hearing be given to the Assessee/undersigned.

Our Power of Attorney is enclosed herewith.”

9 The case of the assessee before us is this that the assessee consistently declared rent receipt from let out of shops as income under the head house property. The said tax position was also duly accepted by the department in the preceding and succeeding year. The assessee already claimed standard deduction under Section 24(a) of the Act to the tune of Rs.57,81,40,137/- upon making suo motu disallowance of other expenses amounting to Rs.13,68,61,227/- in regard to the house property income, details whereof is appearing at page 58 of the paper book filed before us. In the event, the assessee is directed to reclassify the rent receipts as business income, the assessee would be entitled to claim deduction of the above expenses along with an additional depreciation claim of Rs.60,19,18,398/- being 10% of the building value under Section 32 of the Act. The calculation whereof appearing at page 50 of the paper book is as follows:

AMBIENCE DEVELOPERS & INFRASTRUCTURE PRIVATE LIMITED CIN: U74899DL1991PTC046129 Notes on Financial Statements for the Year ended 31st March, 2018								
Note No. - 8								
Tangible Assets	Gross Block			Depreciation			Net Block	
	As on 01.04.2017	Addition/ (Deletion) during the year	As on 31.03.2018	As on 01.04.2017	For the Year	As on 31.03.2018	As at 31.03.2018	As at 31.03.2017
Fixed Assets								
Land	6,073,884.00	-	6,073,884.00	-	-	-	6,073,884.00	6,073,884.00
Shopping Complex, Gurgaon	6,019,183,976.00	-	6,019,183,976.00	915,171,271.00	95,776,962.00	1,010,948,233.00	5,008,235,743.00	5,104,012,705.00
Furniture & Fixture	645,954.00	-	645,954.00	480,983.00	71,231.00	552,214.00	93,740.00	164,971.00
Air Conditioner	482,483.00	-	482,483.00	370,730.00	17,526.00	388,256.00	94,227.00	111,763.00
Generator	51,809,584.00	-	51,809,584.00	28,495,842.00	4,144,652.00	32,640,494.00	19,169,090.00	23,313,742.00
Office Equipments	494,857.00	-	494,857.00	383,561.00	17,310.00	400,871.00	93,986.00	111,295.00
Telephone Equipment	477,334.00	-	477,334.00	278,212.00	26,666.00	304,878.00	172,456.00	199,122.00
Cars	13,965,459.00	-	13,965,459.00	13,267,186.00	-	13,267,186.00	698,273.00	698,273.00
Motor Car (Imported)	482,500.00	-	482,500.00	-	-	-	482,500.00	482,500.00
Scooters	57,997.00	-	57,997.00	55,097.00	-	55,097.00	2,900.00	2,900.00
Voltage Stabilizer	335,409.00	-	335,409.00	318,639.00	-	318,639.00	16,770.00	16,770.00
Tractor	79,643.00	-	79,643.00	75,661.00	-	75,661.00	3,982.00	3,982.00
Computers	2,730,590.00	-	2,730,590.00	2,594,060.00	-	2,594,060.00	136,530.00	136,530.00
Total	6,095,819,670.00	-	6,096,819,670.00	961,491,242.00	100,054,347.00	1,061,545,589.00	5,035,274,081.00	5,135,328,428.00
Previous Year	6,095,819,670.00	-	6,096,819,670.00	861,436,895.00	100,054,347.00	961,491,242.00	5,135,328,428.00	-

10. On a standalone basis the effect of such reclassification of rent receipts as business income on the overall income of the assessee is as follows:

Computation as per Section 263 order		Amount (in Rs.)	Reference to paper book
Profit & Loss Account (PBT)		17,09,20,004	Pg. 58 – Computation of income
Add:	Depreciation as per Companies Act	10,00,54,347	
Add:	CSR Expenditure	30,36,000	
Gross Total – (A)		27,40,10,351	
Computation as per Section 263 order		Amount (in Rs.)	Reference to paper book
Less:	Depreciation as per the Act - (B)	(60,19,18,398)	Annexure 3
Revised Business Loss as per Section 263 order (C) = (A) – (B)		(32,79,08,047)	
	Returned Loss as per original ITR – (D)	(19,32,19,678)	Pg. 58 – COI
Excess loss (to be carried forward) (E) = (C) – (D)		(13,46,88,369)	

11. Therefore, in view of the claim of depreciation of Rs.60,19,18,398/- i.e. of 10% of the building value that too in terms of the direction passed by the Ld. PCIT invoking the revisionary jurisdiction under Section 263 of the Act would on the contrary be prejudicial to the interest of revenue as there would be excess loss as indicated hereinabove available with the assessee for carry forward and set off with future income.

12. We find that the main thrust of the Ld. PCIT in considering the order of assessment for the year under consideration is erroneous qua issue of incorrect categorization of business income as rental income was mainly on the finding of the assessee not being the owner of the shops which is the first and foremost condition to be fulfilled in terms of the provision of Section 22 of the Act. As the assessee is not the owner of the

property on which excess rental income Rs.35.64 crores has been earned the same is found to be 'business income' and neither eligible for standard deduction under the head 'income from house property'.

13. In this regard, the details of the sale deed, purchase cost and stamp duty in respect of each of the properties for a land measuring about 22.7 acre as furnished by the assessee and not been disputed by the Ld. DR is reproduced hereinbelow:

Total Cost as per Sale Deed			
Sale Deed No.	Cost	Amount (in Rs.)	
6950	Purchase Cost	80,16,562	
	Stamp duty	10,02,125	90,18,687
8500	Purchase Cost	9,60,000	
	Stamp duty	1,20,000	10,80,000
8501	Purchase Cost	9,60,000	
	Stamp duty	1,20,000	10,80,000
8502	Purchase Cost	9,60,000	
	Stamp duty	1,20,000	10,80,000
8503	Purchase Cost	9,60,000	
	Stamp duty	1,20,000	10,80,000
8504	Purchase Cost	9,60,000	
	Stamp duty	1,20,000	10,80,000
8505	Purchase Cost	9,60,000	
	Stamp duty	1,20,000	10,80,000
Total Cost as per Sale Deed for approx 22.7 Acre			1,54,98,687
Total Area use in Construction of Mall (in Acres)			8.00
Purchase Cost of land of Mall			54,57,584
Add : Misc Expense incurred			6,16,300
Total Cost of Land as per Balance Sheet of ADIPL			60,73,884

14. We have considered the 7 deed of sales, executed between the assessee and the owner of the properties, one of which being Sr. No. 3 of the above list is reproduced herein below:

8501

Sr. No. 1553

Dated. 14/2/92

Certified that under Section 42 of the Indian Stamp Act, 1889 that stamp duty of the amount of Rs. 1,20,000/-

(Rupees one lac, twenty thousand only only)

has been levied on this document and paid by Bir Singh of Pralokh

Nalhapur Ch. Mir Singh of Pralokh B Nalhapur

vide Treasury Chellan No. 61

Rs. 9,60,000/-

dated 14/2/92 in Jan 1992 H.L.F.

Enterprises (P) Ltd.



TREASURY OFFICER
 GURGAON
 14/2/92

विवरण	मातृभाषा	स्टाम्प	नं०	ता०	स्टाम्प
व्यवसाय	9,60,000/-	1,20,000/-	1553	14-2-92	
नाम स्टाम्प फर्मा					शब्द
खजाना गुडगाँवा	पालान नं० 61 सर्टिफिकेट	1,20,000/-			400

मनके वीर सिंह पुत्र प्रभु पुत्र राम सिंह निवासी नाल्हापुर तहसील व जिला गुडगाँवा का जो कि मैं आराजी खेत खाता नम्बर 31-32/122 ता 129 उत्तरा नम्बर 530 531 0-15 7-1

532 533 527 535 कुल 11 बीघा 4 दिसवा पुठता का 1/6 हिस्सा बयकर
 0-8 0-2 0-5 1-15

01/2/92

-2-

1. बीचा 17 बिस्वा 6 बिस्वांती पुख्ता पाका नाथपुर तहसील व जिला गुडगाँवा का
मालिक व काबिज बरूये इन्तकाल नम्बर 927 तारीख 23-2-89 का हूँ। जो हर तरहके
खार से पाक है। याचि रहन, बय, पटटे, पर नहीं है। न एक्वायर के नोटिस आये है
न किसी अदालत में मुकदमा पिपाराधीन है। मुझको जमीन की किमत बहुत अच्छी मिल
रही है। जिस्ते में दुगनी जमीन खरीद कर सकता हूँ व अपने परिवार का गुजारा भी
तही प्रकार से हो जावेगा। इसलिए ठीक होश में अपनी मर्जी से बिगेर किसी दवाब के
जमीन तादादी 11 बीचा 4 बिस्वा पुख्ता का 1/6 हिस्सा मजकूरा बाला को बदले
9, 60, 000/रुपये। नो लाख साठ हजार रुपये। जिस्के आये 4, 80, 000/रुपये होते है।
बहक भैतलै सय सल सफ इन्टरप्राईजीज प्रा० लि० 16-बी कम्युनिटी सेंटर इस्तन्त लोक इस्तन्त
बिहार नई दिल्ली-110057 बजरिये के डी. बाली मैनेजर बय कर-कर अपने जैसी मालिक
बना दी। जिस् तरह पाहे काम में ले उजर नहीं होगा। कुल जर बय इतपसील में से बरूये
रशीद तारीख 18-11-91 बजरिये डाफ्ट मुबलिंग 1, 10, 000/रुपये। एक लाख दस हजार
रुपये। सुवांस पतुल पा पुका हूँ। व रोगरु जनाब तब रजिस्टार साहब बजरिये हाफ्ट
नम्बर 124310 तारीख 18-2-1992 बैंक अफ बडोदा इस्तन्त गांव नई दिल्ली
देय गुडगाँवा मुबलिंग 8, 50, 000/रुपये। आठ लाख पचास हजार रुपये। पतुल पाउगा।
कहजा दे दिया है। इन्तकाल दर्ज व मंजूर करा दूंगा अगर न कराउ तो बजोर अदालत के
कियाला करा ले उजर नहीं होगा। अगर जमीन बयशुदा की बाबत और कोई मालिक
बनकर पा राजीई करेगा उसकी जवाबदेही मेरे जिम्मे होगी। खरीदार से वास्ता न होगा।

बीर सिंह

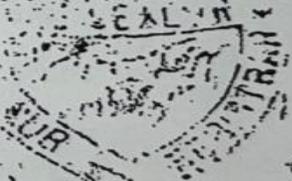
पेज/3



श्री अमलेश्वर
1

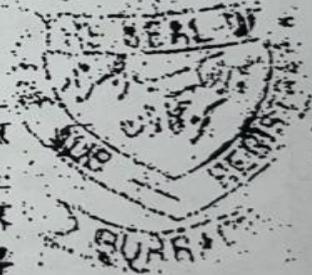
श. अमलेश्वर
Apeel

भाषण किया जाता है कि इसका
उत्पीड़न के निशान भंगुठ/
ज्यादा हमारे सामने आएंगे



श्री अमलेश्वर
उत्पीड़न

वसिका नं० ४९० अति बही नं० १
जिदद नं० २५३१ पृष्ठ नं० १९९-१८ पर
असा दिनांक १९-१२-२०१०
जिदद नं० ६६० ४० पर
दिनांक १९-१२-२०१० को दल रजिस्ट्रार
द्वारा किया गया




रजिस्ट्रार
जयपुर

15. From the above documents it is crystal clear that the assessee before us is the owner of the shops in dispute income whereof has been directed to be treated as 'business income' instead of 'income from house property' income by the revisionary order under Section 263 of the Act passed by the Ld. PCIT. This is admittedly an incorrect finding of fact which cannot justify the order passed by the Ld. Assessing Officer accepting rental income of the assessee in respect of shops in question as erroneous. Thus, the first condition envisaged under Section 263 of the Act in exercising revisionary jurisdiction by the Ld. PCIT fails. The second condition as to whether the order passed by the Ld. AO is prejudicial to the interest of revenue has already been dealt with in the foregoing paragraph justifies, the treatment made by the assessee as income from house property is correct. Otherwise, in the event direction issued by the Ld. PCIT, if, at all, be accepted then the claim of depreciation of the assessee to the tune of Rs.60.39 crores has to be accepted and the same would be a loss of tax to the revenue and thus, in fact, on the contrary prejudicial to the interest of revenue and not the assessee.

16. In this regard, we have further considered the revised computation of income. Had the contention made by the Ld. PCIT is accepted on incorrect categorization of business income as rental income then the following depreciation is found to be allowable to the assessee:

Revised Computation of Income

Computation as per Section 263		Amount
Profit & Loss Account		170,920,004
Add:	Depreciation as per Companies Act.	100,054,347
Add:	CSR Expenditure	3,036,000
	Gross Total	274,010,351

Less:	Depreciation as per Income Tax Act	601,918,398
	Revised Loss as per Section 263 of the Act	(327,908,047)

Computation as per Original Return		Amount
Less:	Loss as per Original Return	193,219,678
	Excess Loss be C/F	(134,688,369)

Revised Computation of Income

Computation as per Section 263		Amount
Profit & Loss Account		493,156,047
Add:	Depreciation as per Companies Act	100,742,016
Add:	CSR Expenditure	3,397,000
Add:	Interest on TDS	5,215,103
Add:	GST Late Filing Fee	19,150
Add:	Disallowance U/s. 40(a)(ia)	60,000
	Gross Total	602,589,316
Less:	Depreciation as per Income Tax Act	541,726,557
	Revised Profit & Loss as per Section 263 of the Act	60,862,759
Less:	B/F Losses from A.Y. 2018-19	134,688,369
	Net Loss for the Year to be C/F	73,825,610

17. In this regard, the judgment passed by the Hon'ble jurisdictional High Court in the case of ITO, Vs. D.G. Housing Projects Ltd., reported in (2012) 20 taxmann.com 587 (Delhi) as relied upon by the assessee has further been considered by us wherein the exercising of jurisdiction by the Commissioner asking the officer to decide whether the order was erroneous is found to be bad in law, in view of the fact that the PCIT must come to the conclusion that the order is erroneous and is unsustainable in law. The order of Ld. AO may not be wrong neither the PCIT can direct reconsideration on this ground but only when the order is erroneous. The order of the Ld. AO who had conducted inquiries and had acted as an investigator cannot be said to be erroneous unless further enquiry is conducted by the Ld. PCIT concluding with a definite

finding on merit establishing the fact of order of Ld. AO being erroneous. Thus, the Ld. AO's order could be said to be erroneous unless the PCIT holds and records reason why it is erroneous. On this issue, the following observation was made by the Hon'ble Delhi High Court:

“16. Thus, in cases of wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under Section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing Officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under Section 263 of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question.”

18. This particular aspect of making enquiry on the replies filed by the appellant on the fact of prejudice to be caused whether to assessee or Revenue has not found to have been verified or enquired by the Ld. PCIT while issuing direction to the Ld. AO for reassessment claiming the earlier order dated 03.08.2021 erroneous and prejudicial to the interest of revenue.

19. We further repeat that the Ld. PCIT has not done any inquiry or verification on the entitlement of the assessee for depreciation of

Rs.60.39 crores which ultimately led to loss of tax which was otherwise collected on the basis of ITR filed which is evident from paragraph 4.2.2. Thus, the Ld. PCIT has not been able to consider that in the event the categorization of 'business income' from 'income from house property' is accepted by the assessee then in view of the claim of depreciation of Rs.60.39 crores the same would ultimately be a loss of tax to the Revenue. In our considered opinion, the same is prejudicial to the interest of the Revenue if the observation made by the Ld. PCIT is accepted. No concrete finding on this aspect is forthcoming from the Ld. PCIT as admittedly no inquiry on this particular aspect of the matter has been done and thus, the ratio laid down in the order passed by the Hon'ble jurisdictional High Court is found to be squarely applicable in the case in hand.

20. The Ld. PCIT has not ascertained the jurisdictional fact of claim of depreciation of Rs.60.39 crores to be made by the assessee in the event the treatment made by the assessee is directed to be recategorize as 'business income' from 'income from house property' the same would ultimately lead to loss of tax and actually prejudicial to the interest of Revenue. As no concrete finding is forthcoming from the order impugned issued by the Ld. PCIT in the absence of proper inquiry conducted by him, the ratio laid down by the Hon'ble High Court in the case of ITO Vs. D.G. Housing Projects Ltd. (supra) is found to be squarely applicable. In this particular case, the order of Ld. AO cannot be said to be erroneous or the same is not sustainable in the eyes of law in the absence of concrete finding recorded by the Ld. PCIT to that effect on merit and thus, the order remanding the issue to the file of the Ld. AO to decide the

same afresh is beyond jurisdiction exercised under Section 263 of the Act by the Ld. PCIT.

21. Thus, taking into consideration the entire aspect of the matter, we find that neither the first condition envisaged under Section 263 of the Act of finding the order passed by the Ld. AO being erroneous nor the second condition that the same would be prejudicial to the interest of revenue is found to be satisfied by the order impugned passed by the Ld. PCIT. Under this facts and circumstances of the matter, we find that the order impugned does not qualify the terms and conditions envisaged in Section 263 of the Act and exercise of revisionary jurisdiction by the Ld. PCIT is beyond the periphery of the statutory provision envisaged under Section 263 of the Act and thus, found to be not sustainable in the eyes of law and therefore, quashed.

ITA No. 1869/Del/2025 (AY: 2020-21)

22. In view of the identical facts involved in ITA No. 1868/Del/2025 the ratio laid down therein is also applied mutatis mutandis in this appeal in ITA No. 1869/Del/2025 preferred by the assessee.

23. Both the appeals preferred by the assessee are allowed.

Order pronounced in the open court on 12.09.2025

Sd/-
(Naveen Chandra)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 12.09.2025
Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI