



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1109/PUN/2025

Assessment Year : 2021-22

Ravindra Jaisingrao Chavan, Office No.204, Rajdeep Apt. N-5, CIDCO, Aurangabad 431 001 Maharashtra PAN : AERPC4943B	Vs.	ACIT (Central Circle-1), Aurangabad
Appellant		Respondent

Appellant by	:	Shri Vardhaman L. Jain
Respondent by	:	Shri Amit Bobde
Date of hearing	:	15.07.2025
Date of pronouncement	:	06.10.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal at the instance of assessee pertaining to A.Y. 2021-22 is directed against the order dated 25.03.2025 of Ld.PCIT (Central), Nagpur passed u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') arising out of Assessment order dated 30.12.2022 passed u/s.143(3) of the Act.

2. Assessee has raised following grounds of appeal :

"1. The learned PCIT has erred on facts and in law in not providing a proper opportunity of hearing and thus breaching the principle of natural justice.

2. The learned PCIT has erred on facts and in law in assuming jurisdiction under Section 263 of the Income Tax Act, 1961.

3. The learned PCIT has erred on facts and in law in invoking Section 263 as there was no material on record to establish that the



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assessment was erroneous or prejudicial to the interests of the Revenue.

4. *The appellant craves leave to amend any of the grounds of appeal or add to the same, if deemed necessary.”*

3. We will first take up the Grounds of appeal No.1 through which ld. Counsel for the assessee has contended that proper opportunity of hearing was not provided by ld. PCIT thereby breaching the principles of natural justice. Ld. Counsel for the assessee referred to the show cause notice u/s.263 of the Act which is dated 10.03.2025 and in response the assessee furnished written submission through its Authorised Representative on 17.03.2025 and immediately thereafter on 26.03.2023 the impugned order has been passed. It is submitted that due to lack of sufficient opportunity assessee could not furnish complete details before ld. PCIT and therefore one more opportunity may be granted for doing the needful.

4. On the other hand, ld. Departmental Representative supported the order of ld. PCIT.

5. We have heard the rival submissions and perused the record placed before us. The grievance of the assessee is against the revisionary proceedings carried out u/s.263 of the Act and apart from challenging the assumption of jurisdiction u/s.263 of the Act as well as on merits of the case, Ground No.1 has been raised that ld. PCIT erred on facts and in law in not providing proper opportunity of hearing and thus breaching the principles of natural justice.



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6. Before proceeding further, we would like to refer to the brief facts of the case. Assessee is an individual and filed the return of income for A.Y. 2021-22 on 24.02.2022 declaring income of Rs.22,31,180/-. In the case of assessee, survey u/s.133A of the Act was carried out on 05.03.2021 and books of accounts and other documents were impounded during the survey action. Assessee is engaged in the business of manufacturing and sale of crushed sand in the name of M/s. Kalpataru Buildcon. Ld. Assessing Officer (AO) issued statutory notices for carrying out the assessment proceedings and after considering the submissions filed by the assessee in response to the queries raised in the notice issued u/s.142(1) of the Act, assessment completed on 30.12.2022 assessing the income at Rs.2,11,97,716/- after making addition of long term capital gain amounting to Rs.1,89,65,541/-.

7. Thereafter, ld. PCIT called for the assessment records and under the revisionary powers vested u/s.263 of the Act issued show cause notice on 10.03.2025 and the same is reproduced below (relevant extract) :

“2. You had filed Return of Income for A.Y. 2021-22 on 24.02.2022 declaring total income at Rs. 22,31,180/-. Scrutiny assessment u/s. 143(3) was completed vide order dated 30.12.2022 and the total income was determined at Rs.2,11,96,716/-.

3.1. It is seen from the details available in the assessment record as well as from the order of the assessment that the following issue in the assessment order for A.Y. 2021-22 has not been dealt with by the Assessing Officer properly and this requires further examination and verification.

3.2. In this case, action u/s.131 was conducted by Investigation Wing by ADIT, Jabalpur and subsequently survey u/s.133A of the I.T. Act was conducted on 05/03/2021 by DDIT (Inv.), Aurangabad at your office premises at Plot No.52, N-1, CIDCO, Aurangabad. During the proceedings at Jabalpur, a black diary was impounded



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from the possession of the assessee and back up of mobile whatsapp messages was taken by the Investigation Wing, Jabalpur.

3.3. During the course of statement u/s.131(1A) of the Act, the assessee was confronted with the notings made in black diary vide Question No. 12 and in reply the assessee stated that notings made in black diary pertain to real estate project at Chhindwara. In the mobile backup whatsapp messages, conversations with Shri Bhaijan Bhopali, Commission Agent and on-money cash receipts and payments were noted. The assessee had declared additional income of Rs.1,28,00,000/- considering the transactions noted in the diary and other documents.

3.4. During the course of assessment proceedings, the Assessing Officer found that the total on-money received against sale of plots is at Rs.3,21,58,760/- after considering the impounded material. The Assessing Officer had accepted the capital gains as declared on sale of plots of (-) Rs.3,93,219/- and made addition of Rs.1,93,58,760/-, Scrutiny assessment was completed assessing total income at Rs.2,11,96,716/-

4.1. During the year under consideration, the assessee was found to be engaged in the business of real estate project at Chhindwara and sold plots to different parties and received on-money of Rs.3,21,58,760/-. During the course of statement recorded u/s.131(1A) of the Act, the assessee stated that the notings in the diary relate to his real estate business and out of cash receipts he had made a declaration of additional income of Rs.1.28 crores for F.Y.2020-21. However, the assessee had declared the income from real estate under Long-term capital gains at (-)Rs.3,93,219/- in Income Tax Return and the Assessing Officer has accepted the same under LTCG. Thus, the income from real estate has been incorrectly computed under the head LTCG as against income from business.

4.2. As per provisions of Section 2(14) of the I.T. Act, the 'capital assets' means:

(a)****

(b)****

(c)****

but does not include-

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession;

(ii)*****



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As the plots sold are stock-in-trade of the assessee, the same do not constitute capital asset within the meaning of Section 2(14) of the Income Tax Act and the Income arising out of sale of plots falls under the head "Income from Business".

4.3. Further it is observed that the assessee has credited Rs.59,99,424/- as profit on sale of plot, Chindwada. However, the assessee has not offered the same for taxation either in P&L Account or in computation of income.

5. In view of the above facts, I am of the considered opinion that the order of the assessment u/s. 143(3) passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue. It is proposed to set-aside the order of assessment dated 30.12.2022 and issue directions to the Assessing Officer as deemed fit in the facts and circumstances of the case.

6. You are hereby, required to show-cause as to why action as above should not be taken under section 263 of the I.T. Act. The case is fixed for hearing on 17.03.2025 at 3.00 PM in Room No.116, Aayakar Bhawan, Civil Lines, Nagpur 400 001. In this regard, you may appear either in person or through an Authorized Representative. If you do not wish to avail the opportunity of being heard in person, you may send your written submission along with documentary evidence, if any, on or before 17.03.2025, which will be considered in the proceedings u/s 263 of the I.T. Act. It is also stated that in case of non-compliance to this Notice, it will be presumed that you have no explanation to offer and the case will be decided on merit taking into consideration the material available on record."

8. In the above show cause notice u/s.263 of the Act, ld. PCIT has referred to two issues relating to the declaration of additional income of Rs.1.28 crore during the course of survey but has declared loss from sale of plots under the head long term capital gain at Rs.3,93,219/- only and further ld. AO has accepted the same and has not considered the statement of the assessee given u/s.131(1A) of the Act. Ld. PCIT has also observed that the plots sold by the assessee are part of Stock in trade and therefore cannot constitute capital asset u/s.2(14) of the Act. Reference also given to the profit on sale of plot at Chindwada at Rs.59,99,424/- alleging that the



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assessee has not offered the same for taxation in the profit and loss account. Assessee responded to the show cause notice and filed reply on 16.03.2025 which is placed at pages 196 to 213 of the paper book. This is the only reply filed by the assessee and ld. PCIT referring to the said submission firstly dropped the revisionary proceedings initiated on account of the declaration of additional income at Rs.1.28 crore for A.Y. 2020-21 and only carried out the discussion on the sale of plot of land at Chindwada including the taxability of income of plotting transactions under the head profits and gains from the business and secondly regarding the computation of correct income on sale of plots at Chindwada and proportionate cost of land and improvement of the land sold during the previous year.

9. Now in the show cause notice ld.PCIT has only referred to the profit on sale of plot of land at Chindwada at Rs.59,99,424/- but then in the impugned order has referred to the statement of the assessee recorded by ADIT (Investigation), Jabalpur on 05.03.2021 and also about the order of National Lok Adalat on 09.12.2017 , Bench No.2, Chindwada in para 4.1 and 4.2 of the impugned order which reads as under :



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4.1 During the course of proceedings u/s. 131A of the Act, statement of the assessee was recorded by the ADIT(Inv.), Jabalpur on 05/03/2021. The statement was recorded in Hindi. English translation is provided for ease of comprehension. The relevant parts of the statement is as under :-

प्रश्न. 4 : कृपया अपनी आय की समस्त श्रोतों का विवरण दें?

Question No.4 Please describe your all sources of income ?

उत्तर : मेरा एक stone crusher औरंगाबाद (चिते गांव), महाराष्ट्र में है। यह crusher कल्पतरु विल्डकॉन नाम के मेरे व्यावसायिक प्रतिष्ठान के द्वारा संचालित किए जाते हैं। इसके अलावा मैं Land development का काम करता हूँ। मेरा अधिकतर काम औरंगाबाद महाराष्ट्र में ही है। इसके अलावा मेरा आय का कोई अन्य श्रोत नहीं है।

Answer : I have a Stone Crusher at Aurangabad, Chitagaon. This crusher is run under the name of my commercial firm KalptaruBuildcon. Apart from it I do land development. Most of my work is in Aurangabad Maharashtra. There is no other sources of income other than these.

प्रश्न. 6 : आपने पूर्व के प्रश्नों के जवाब में अपना पता तथा अपनी व्यावसायिक गतिविधियों का औरंगाबाद महाराष्ट्र में ही बताया है। कृपया बताये कि आपके छिंदवाड़ा आने का उद्देश्य क्या है?

Question No 6 : In answer to previous question you had described you commercial activity to be in Aurangabad, Maharashtra. Please inform your object of coming to Chhindwara?

उत्तर : मेरा छिंदवाड़ा शहर में कल्पतरु विहार नाम से एक Residential plots का एक project चल रहा है जिसका पता Hyundai Showroom के सामने नागपुर रोड छिंदवाड़ा है। मैं इस project की देख-रेख एक Registry संबंधित कार्य के लिए छिंदवाड़ा शहर आया था।

Answer : The project of Residential plot under the name of KalptaruVihar is in Chhindwara town. The address of which is – In front of Hyundai Showroom, Nagpur Road, Chhindwara. I had come for looking after the project and the registry related works in Chhindwara.



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प्रश्न. 12 : कृपया बताएं कि इस डायरी में क्या लिखा है एवं यह किससे संबंधित है ?

Question No.12 : Please explain what is written in this diary and what is it related to ?

उत्तर : यह मेरा व्यवसाय से संबंधित डायरी है जिसमें मेरे Real Estate व्यवसाय जो कि छिंदवाड़ा में चल रहा है से संबंधित cash एवंcheque लेन - देन की जानकारी है।

Answer : This is my business related diary in which there is information regarding the cash and cheque transactions related to Real Estate business in Chhindwara.

प्रश्न. 15 : आपके पास एक काले रंग की डायरी थी जिसे आपने हमारे समक्ष प्रस्तुत किया है एवं कुछ Loose paper (page 1 to 10) हमारे समक्ष प्रस्तुत किए हैं। डायरी में कुल लिखित पेज 1से 19 हैं एवं Loose papers 1 से 10 हैं जिन्हें विभाग द्वारा आयकर की धारा 131(3) के तहत impound किया गया है। कृपया इसे ध्यान पूर्वक देखें एवं इसके विषय में संपूर्ण जानकारी प्रदान करें।

Question No-15 : You had a black colored diary which you have presented before us. There are written pages (page 1 to 19) and loose papers (pages1-10) which are being impounded u/s. 131(3). Please read it and disclose the contents therein?

उत्तर : महोदय उपरोक्त डायरी पेज क्रमांक 1 से 19 एवं Loose paper पेज क्रमांक 1 से 10 मेरे ही पास उपलब्ध थे जिन्हें आपके मांगने पर मैंने ही आपके समक्ष प्रस्तुत किए थे। यह papers मेरे छिंदवाड़ा स्थित Real -estate कारोबार से संबंधित हैं। इसमें unaccounted cash की प्रविष्टियां दर्ज हैं उन्हीं के आधार पर मैंने विभाग के समक्ष रुपये 1 करोड़ 28 लाख वर्ष 2020-21 की अघोषित आय के रूप में स्वीकार किया है।

Answer : Sir, the diary was available with me which I produced before you on your demand. These papers relate to my Chhindwara based Real Estate business. There are unaccounted cash transactions noted in it and on that basis I have declared Rs.1,28 crore as undisclosed income for F Y 2020-21.

Apparently, the submission of the assessee that the statement does not have any



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evidentiary value unless corroborated by conclusive material was accepted by the Assessing Officer during assessment proceedings.

4.2 The Assistant Director of Income Tax (Investigation) for the purpose of Income Tax Act has the same powers as are vested in a Court under the Code of Civil Procedure Code 1908 when trying a suit in respect of examining a person on oath. A statement recorded under oath u/s. 131 has a strong and conclusive evidentiary value. It is a glaring omission that evidence in the form of such an important statement recorded u/s 131 of the Act under oath (wherein the assessee had himself disclosed his business activity to be that of Real Estate at Chhindwara) had not been confronted by the Assessing Officer to the assessee. It is clearly noted from records that the statement was corroborated by documentary evidence in form of black diary containing 19 written pages and loose sheets containing 10 pages seized from the assessee. The assessee's submission that statement was not corroborated with conclusive evidence was prima facie incorrect and amounted to retraction of statement after a long period of time. The Assessing Officer under such circumstances should have made personal examination of the assessee under oath and should have confronted the assessee with incriminating documents seized on 05.3.2021. The assessee's submission that the statement does not have any evidentiary value unless corroborated by conclusive material was accepted by the Assessing Officer during the assessment proceedings without personal reexamination under oath and on incorrect premise that there were no corroboration by conclusive material.

4.3. In the order of National Lok Adalat dated 09/12/2017, Bench No 2, Chhindwada in Maharshi Institute of Creative Intelligence Vs. 1) Ravindra Chavan, 2) Madhya Pradesh State available on record, the Hon'ble Court has noted that there was a dispute among the parties due to dishonoring of cheques by Shri Ravindra Chavan. There is a mention of Survey No.79/1, 79/4, 79/2 and piece of land admeasuring 6.378 hectares. The Court noted that the assessee Shri Ravindra Chavan and his brother Shri Sharad Chavan had agreed to pay Rs.18 crore for the entire area of plots in which the earlier paid amount would be deducted.

4.4. It is observed that during assessment proceedings the assessee had submitted two sale deeds for showing land acquired, which was sold. Shri Ravindra Chavan purchased a piece of land on 11/3/2014 admeasuring 2.253 hectare under Survey No.79/1 for a consideration of Rs.2 crores paid through post dated cheques. The assessee Shri Ravindra Chavan and Shri Sharad Chavan purchased a piece of land on 16/3/2014 under Survey No.79/2 admeasuring 1.925 hectares for a consideration of Rs.1.5 crores paid through post dated cheques.

The AO should have asked about the multiple purchases out of atleast 3 Survey numbers for land admeasuring 6.378 hectares whereas the assessee had given Sale Deed of only 2 plots for land admeasuring 4.178 hectares in land transactions with Maharshi Institute of Creative Intelligence. The Court order strongly indicated multiple transactions in land which is a sign of trading activities.



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4.5. The AO did not ask any question regarding proportionate cost of purchases mentioned at Rs.4,12,00,900/- for plots in Survey No.79/1 and 79/2 whereas the entire consideration for the 2 plots including the share of Shri Sharad Chavan was Rs.3.5 crores only out of which some cheques were dishonored leading to Court dispute. The logical inference appears to be cost being lesser than Rs.3.5 crores and not Rs. 4.12 crores. There were no inquiries made regarding the amount of Rs. 4.12 crores claimed to have been invested in the year 2013-14 by the assessee. The assessee has claimed Rs.6.25 crore as Cost of improvement due to Court's order for F.Y 2017-18. The AO should have asked about the cost of acquisition and improvement proportionate to sale of the plots. There was no question asked regarding this aspect during assessment and there are no details regarding it in the assessment records even when it was essential to find out the cost relating to the plots sold before computation of income thereon.

4.6 During the assessment proceedings, the assessee had stated that he had purchased land with an intention to set up a four wheeler showroom or petrol pump. However, there was no question asked by the AO regarding the land admeasuring 6.378 hectares from Maharshi Institute of Creative Intelligence which is equivalent to 15.76 acres and which seems quite in excess to the requirement stated by the assessee for purchase of land. The AO has not enquired regarding the purchase of land far in excess of the stated objectives given by the assessee.

10. Ld. PCIT has also referred to the over statement of the proportionate cost of acquisition and improvement (without indexation) of the plot of land at Chindwada at Rs.1,13,93,623/- with reference to the assessee's own ledger account. For the rebuttal of all these observations fair opportunity was required to be given to the assessee by ld. PCIT. However, no further notice issued to the assessee to respond to all these queries and in a very short span, i.e. one week from the date of first submission by the assessee, ld. PCIT has passed the impugned order on 25.03.2025, which clearly indicates that proper opportunity of hearing has not been granted to the assessee thereby not adhering to principles of natural justice.

11. *Audi Alteram Partem* is a latin maxim (Hear the other side) and this principle is the bedrock of procedural fairness and is premised on the idea that no one should be condemned unheard. In the context of tax proceedings, it mandates that the assessee must be given (i) prior notice of the proceedings



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or proposed action against him. (ii) informed of the material or evidence being relied upon by the AO to make an addition or adverse inference (iii) provide copies of relied-upon documents so that assessee can formulate his defence (iv) allow to make a written representation, either personally or through a legal representative (v) grant adequate time to submit his reply or evidence (vi) give an opportunity for a personal hearing, if requested, where the assessee may explain his position orally and (vii) allow the right of cross-examination, especially if the AO relies on third-party statements or testimonies to frame additions.

12. Hon'ble Supreme Court in its recent judgment in the case of *Krishnadatt Awasthy Vs. State of M.P. & Ors - Civil Appeal No. 4806 of 2011 judgment dated 29.01.2025 (2025 INSC 126)* has observed as under :

“68. The principle of audi alteram partem is the cornerstone of justice, ensuring that no person is condemned unheard. This principle transforms justice from a mere technical formality into a humane pursuit. It safeguards against arbitrary decision-making, and is needed more so in cases of unequal power dynamics.

69. An allegation of bias, can only be proved if facts are established after giving an opportunity of hearing. This process requires a fair and transparent procedure in which the concerned parties are given an adequate opportunity to present their case. Such an opportunity allows the accused party or the affected individuals to respond to the allegations, provide evidence, and clarify any misgivings regarding the decision-making process. Therefore, for an allegation of bias to be proved, it is imperative that the procedural safeguards of a fair hearing are observed allowing for establishment of the relevant facts.

70. In light of the foregoing, we uphold the opinion of Justice KV Vishwanathan allowing the appeal(s) and setting aside the judgment of the Division Bench. Resultantly, this Court is not able to endorse the opinion rendered by Justice JK Maheshwari.



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71. Since the selection pertains to the year 1998, and the appellants have continuously held office and performed their duties for over twenty-five years under interim orders, remanding the matter for a fresh inquiry would hardly be a practical exercise and will be an injustice to the appointees. The time lag can be better appreciated by bearing in mind that one of the appellants has already superannuated.

72. The matters stand answered and allowed on the above terms. Parties to bear their own cost.”

13. In light of above principle and also taking note of the various observations of ld. PCIT in the impugned order dated 25.03.2025, holding the assessment order dated 30.12.2022 as erroneous and prejudicial to the interest of Revenue, we find that ld. PCIT has referred to the facts and various other observations which were not appearing in the submissions filed by the assessee in reply to the show cause notice and therefore the assessee deserves fair opportunity to respond to such observations of ld. PCIT. We also notice that in the paper book page Nos.171 to 193 assessee has filed a copy of declaration under the Direct Tax Vivad Se Vishwas Scheme and Form No.2 refers to the Tax Arrear of Rs.3,73,53,478/- and Form No. 3 has been issued on 07.05.2025. Even during the course of hearing, ld. Counsel for the assessee referring to para 4.1 of the show cause notice u/s.263 of the Act has stated that the issue has already been declared in the VSVS however the impugned order has been passed much before on 25.03.2025. All these aspects clearly indicates that revisionary proceedings needs to be carried out afresh after taking into consideration the facts narrated before us during the course of hearing by ld. Counsel for the assessee and observations of ld. PCIT needs to be confronted to the assessee for which reasonable opportunity shall be granted. Impugned



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order is set aside and the Grounds of appeal No.1 raised by the assessee is allowed.

14. Since we have allowed the legal issue raised by the assessee in Ground No.1, dealing with remaining grounds raised on merits would be merely academic in nature and thus held to be infructuous.

15. In the result, the appeal filed by the assessee is allowed for statistical purposes as per terms indicated hereinabove.

Order pronounced on this 06th day of October, 2025.

Sd/-

(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th October, 2025.

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.