

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH, DB: AGRA**

**(Through Physical / Virtual Hearing)**

**BEFORE SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER,  
AND  
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.- 283/Agr/2025  
[Assessment Year: 2017-18]**

ITO, Ward 4(1)(3), Aaykar Bhawan Marris Road Aligarh- 202001.	VS	Indu Gold & Diamond Pvt. Ltd., 3/64 Lekhraj Nagar Aligarh, Aligarh- 202001.
<b>PAN- AADCI3721Q</b>		
Revenue		Assessee

Assessee by	Shri Pankaj Gargh, Adv.
Revenue by	Shri Anil Kumar, Sr. DR

<b>Date of Hearing</b>	<b>17.07.2025</b>
<b>Date of Pronouncement</b>	<b>09.10.2025</b>

**ORDER**

**PER BRAJESH KUMAR SINGH, AM,**

This appeal has been preferred by the Revenue against the order dated 09.03.2025 of National Faceless Appeal Centre (NFAC)/ CIT(A) pertaining to Assessment Year 2017-18 arising out of Assessment

Order u/s 143(3) r.w.s. 263 of the Income-tax Act, 1961(hereinafter referred to as 'the Act') dated 28.03.2023.

2. Brief facts of the case are: The original assessment was completed in this case on 26.12.2019 at total income of Rs. 8,24,620/-, and subsequently, the said order was partly set aside by the Ld. PCIT-1, Agra vide order dated 31.03.2022 under Section 263 of the Act. Thereafter, the AO passed an order u/s 143(3) r.w.s. 263 of the Act, dated 28.03.2023, at the total income of Rs. 1,39,50,162/-, wherein following additions were made:

- i. Addition on account of unexplained cash credit -  
Rs.1,17,75,535/-*
- ii. Addition on account of unexplained cash expenditure  
- Rs.13,50,007/-*

3. In the meantime, the assessee had challenged the order u/s 263 passed by the Ld. PCIT-1, Agra, before the Tribunal, Agra Bench. By a consolidated order dated 21.02.2025 in ITA No. 33/Agr/2023 for A.Y. 2012-13 & ors. (ITA No. 81/Agr/2022 for A.Y. 2017-18, related to the assessee), quashed the impugned order dated 31.03.2022 passed u/s 263 by holding as under:

“ 5. We have given out thoughtful consideration to the vehement rival pleadings. We find no reason to sustain any of the impugned revision direction forming subject matter of our adjudication in all these cases. This is for the precise reason that apart from reproducing the corresponding show-cause notices which went un-responded by the most of the assessees, there is not even a single instance wherein the learned revisional authority has arrived at any categorical finding on merits after having discussed the relevant error as well as prejudice caused to the interest of the Revenue. Needless to say, the law on exercise of the impugned revision jurisdiction stand very well settled since long in light of *Malabar Industries Ltd. vs. CIT (2000) 243 ITR 83(SC)* that before the same is invoked, the assessment has to be simultaneously erroneous as well as causing prejudice to the interest of the Revenue. Meaning thereby that till the time such a conclusion is not arrived at by the learned revision authority, an assessment could not be held as liable to be revised merely because of the fact that the corresponding show-cause notice(s) issued to the taxpayer have gone un-responded. We are further informed that case law *M. L. Chains Vs. PCIT (2024) 461 ITR 457 (All.)* has already decided the very issue involving a similar revision direction, as not sustainable, in para 20 thereof. We thus accept the assessees identical submissions in all these cases to this extent and reverse the learned PCIT's section 263 corresponding revision directions. identical accordingly. All necessary computation shall follow.

6. All other pleadings on merit amongst the parties stand rendered academic in above terms.

7. To sum up, all these twenty one assessees as many appeals ITA Nos. 39 & 46/Agr./2021, ITA Nos. 26, 39, 40, 47, 49, 50, 66, 67, **81**, 83, 84, 85, 97, 98 & 107/Agr./2022, ITA Nos. 33, 107 & 153/Agr./2023 and ITA Nos. 139/Agr./2024 are allowed in above terms. A copy of this common order be placed in the respective case files.”

*(emphasis supplied by us)*

4. Against the order passed u/s 143(3) r.w.s. 263 of the Act, dated 28.03.2023, the assessee filed an appeal before the Ld. CIT(A), who allowed the appeal on the ground that the order u/s 263 of the Act,

dated 31.03.2022 had been reversed by the Co-ordinate Bench of the Tribunal vide order dated 21.02.2025 and consequently, the assessment order passed u/s 143(3) r.w.s. 263 of the Act dated 28.03.2023 had no legs to stand and, therefore, does not survive for consideration. The Ld. CIT(A) held as under:

*“ 4.1 Under such circumstances, the undisputed facts that emerge are that the impugned underlying order u/s 143(3) r.w.s 263 dated 28.03.2023 is an order giving effect to the order passed u/s 263 dated 31.03.2022 by the Ld. PCIT-1, Agra. However, this order u/s 263 has been reversed by the Hon'ble ITAT vide order dated 21.02.2025(supra). Hence, in view of the above, the captioned underlying order u/s 143(3) r.w.s 263, which derived its jurisdiction from the order u/s 263 dated 31.03.2022, has no legs to stand and thus, does not survive for consideration, with the reversing of the order u/s 263 of the Act. Resultantly, the grounds [grounds 1 to 6] contained in the present appeal become infructuous which do not require any adjudication. Accordingly, the underlying impugned order u/s 143(3) r.w.s 263 does not survive in law and resultantly, the appeal to this extent- is Allowed SOLELY ON THIS REASON and purely for statistical purposes without going into merits or any other aspect of the appeal.*

5. Against the said order, the Department is in appeal with the following grounds:

*“1. That the appellant craves leave to add or delete or later or modify any one OR more ground(s) of appeal during the appellate proceedings.*

*2. That the CIT(A) has erred on fact AMD law in holding that the assessment order u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 dated 28.03.2023 does not survive for consideration after relying upon the order dated 21.02.2025 passed by the Hon'ble ITAT, Agra Bench, Agra in the appeal of the assessee in ITA No. 81/Agr/2022, wherein the Hon'ble ITAT reversed the revisionary order passed u/s 263 of the I.T. Act dated 31.03.2022, without considering the fact that judicial finality has not been attained with respect to the order dated*

21.02.2025 of the Hon'ble ITAT as the department continuous to retain the statutory right to file an appeal against the said ITAT's order dated 21.02.2025 before the Hon'ble High Court.

3 That the CIT(A) has erred on fact AMD law in allowing the appeal of the assessee solely on the basis of the order dated 21.02.2025 passed by the Hon'ble ITAT, Agra Bench, Agra, in ITA No. 81/Agr/2022. Whereas, the said order dated 21.02.2025 has not attained judicial finality AMD remains susceptible to further appellate proceedings AMD in the event the Department succeeds in such appellate proceedings, the order passed by the CIT(A) under section 250 of the Act on 09.03.2025 would result in a substantial AMD irreversible loss of revenue to the Department.

4. That the order passed by the CIT(A) on 09.03.2025 is bad in law AMD liable to be set-aside, as it is based on an assumption that the findings of Hon'ble ITAT are conclusive, despite pending legal recourse available to the Department.”

*(emphasis supplied by us)*

6. The Ld. DR supported the order of the AO and the Ld. AR supported the order of the Ld. CIT(A).

7. We have heard the rival contentions and perused the material available on record. In view of the fact that the impugned order u/s 263 of the Act dated 31.03.2022 passed in this case has been set aside by the Co-ordinate Bench of the Tribunal as referred above, the consequential order u/s 143(3) /263 of the Act, dated 28.03.2023 passed in this case does not survive and therefore, the appeal of the assessee has been rightly allowed by the Ld. CIT(A) and no interference is called for in his order. We, therefore, dismiss the grounds of appeal filed by the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 09<sup>th</sup> October, 2025.

**Sd/-**  
**[SUNIL KUMAR SINGH]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[BRAJESH KUMAR SINGH]**  
**ACCOUNTANT MEMBER**

**Dated** 09.10.2025.

Pooja.

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi,