

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “A”, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 4929/MUM/2025(A.Y: 2016-17)**

Arham Anmol Projects Pvt. Ltd. Vs. Circle-1, Kalyan

H. No. 1113, Ground Floor, 2nd floor, Rani Mansion,
ArhamOgiparc, NH-3, Nashik Murbad Road, Kalyan (West),
Highway, Village Valshind, Thane, Maharashtra, India-
Bhiwandi, Maharashtra-421302. 421301.

PAN: AAGCA9644P

(Appellant)

(Respondent)

Assessee Represented by	:	Shri Subhash Bains, Ld. AR
Department Represented by	:	Shri Surendra Mohan (Sr. DR.)
Date of conclusion of Hearing	:	22.09.2025
Date of Pronouncement	:	13.10.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 11.06.2025 of National Faceless Appeal Centre (NFAC), Delhi[hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the



A.Y. 2016-17, wherein the assessment order dated 23.03.2022 u/s 147 r.w.s 144B of the Act was confirmed.

2. The brief facts as culled out from the proceedings of authorities below are that the assessee is engaged in the business of sector of builders and received rental income at Rs. 3,71,32,200/-. The assessee has sold the immovable property at Rs. 7,83,000/- in addition to the above rental during the year under consideration. The assessee has not filed the income tax return for the relevant year. A show cause notice was issued and since no return of income was filed u/s 139(1) of the Act, the case was selected for scrutiny u/s 148 of the Act dated 29.03.2021 through ITBA. However no ITR was filed during the proceeding. Therefore, statutory notice u/s 142(1) of the Act dated 10.11.2021, 16.12.2021 and 28.12.2021 was issued but the assessee did not comply the same. Accordingly, AO decided to pass the order ex-parte u/s 144 of the Act and completed the assessment and made addition of Rs. 1,14,63,829/- to the total income of the assessee.
3. Aggrieved by the order of AO, assessee preferred the appeal before Ld. CIT(A). During the appellate proceedings, Ld. CIT(A) has issued notices



on the registered e-mail, but no response was given to the said notice. Accordingly, Ld. CIT(A) proceeded to decide the matter ex-parte on the material available on record and confirmed the assessment order by observing that no counter arguments has been brought on record by the assessee, therefore 10% of the gross receipts of Rs. 11,46,63,829/- i.e. Rs. 1,14,63,829/- added to the total income of the assessee by the AO was justified. Accordingly, the appeal of the assessee was dismissed.

4. Aggrieved by the said impugned order, the assessee is in appeal before us and has raised the following grounds of appeal:-

1. On the facts and in the circumstances of the case and in law, the assessment u/s 144 r.w.s 144B of the Income-tax Act, 1961 is invalid and illegal because the reopening of the assessment is not in conformity with the express legal provisions, therefore, order of CIT (Appeal)/NFAC is incorrect, the same may please be set aside as there is no independent application of mind by the AO while reopening the case.

1.1 The notice dated 2913/2027 u/s 748 does not have digital signature as per CBDT's DSC Policy 2018, therefore, reopening of assessment is wrong hence assessment should have been declared invalid ab initial by CIT(A)/NFAC.

1.2 The AO is silent as to when the notice dated 2913/2021 was served upon assessee therefore; the foundation of assessment itself is without legs to stand.



1.3 The CIT (Appeal)/NFAC has wrongly confirmed AO's order which is issued without issuing notice u/s L43 (2) as per minimum prescribed requirement of law, hence the CIT (Appeal)/NFAC may please be set aside.

2. Without prejudice to the above ground no.1, on the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal)/NFAC erred in upholding the determination of the income of the appellant at Rs. 1,14,63,830/- by the AO without considering any logical expenditure in this case, therefore, order of CIT (Appeal)/NFAC may please be set aside.

2.1. The Ld. AO erred in making an addition on estimation basis of Rs. 1,14,63,830/- on the turnover of the assessee account of alleged sale of property as reflected in ITS details, therefore, order of CIT (Appeal)/NFAC is suffering from inherent mistake in confirming the same hence the same is requested to be set aside.

2.2. The Ld. AO erred in making an addition of 10 percent of net profit on alleged sale of property of Rs. 7,83,00,000/- and rental receipts of Rs. 3,63,38,293/- under the head business income on the basis of information in Form 26A5 without any corroborative evidences on his record, therefore, order of CIT (Appeal)/NFAC is suffering from inherent mistake in confirming the same hence the same is requested to be set aside.

3. on the facts and in the circumstances of the case and in law, the factual matrix noted by CIT (Appeal)/NFAC in para 3.2 of appellate order dated 11.06.2025 should have been considered and natural justice defrayed in peculiar circumstances of this case especially facts mentioned in ground no. 2 of grounds of 1st appeal. Therefore, Hon'ble ITAT is urged to decide the case in consideration of all evidences to grant relief to the appellant and set aside the order of CIT (Appeal)/NFAC.



4 on the facts and the circumstances of the case and in law, the Ld. AO erred in levying interest u/s 234A, 234B and 234C of the Act, and the order of CIT (Appeal)/NFAC is not correct as per procedure in confirming the same, hence the same is requested to be set aside.

5. On the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty u/s 271(1)(c) of the Act, and the order of CIT(Appeal)/NFAC is not correct as per procedure in confirming the same, hence the same is requested to be set aside.

6 on the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty u/s 271(1)(c) of the Act, and the order of CIT (Appeal)/NFAC is not correct as per procedure in confirming the same, hence the same is requested to be set aside.

7 on the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty u/s 271F of the Act, and the order of CIT (Appeal)/NFAC is not correct as per procedure in confirming the same, hence the same is requested to be set aside.

8 on the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty u/s 271B r w s 44AB of the Act, and the order of CIT (Appeal)/NFAC is not correct as per procedure in confirming the same, hence the same is requested to be set aside.

9 The appellant craves leave to add, alter or delete, or modify any or all the above of appeal as and when advised as per law.



5. On the first date of hearing, Ld. AR of the assessee has brought to the notice that the assessee would like to raise additional ground in the appeal as under:-

1. The Ld. PrCIT, Thane-1 has issued order u/s 263 dated 13/03/24 setting aside the impugned assessment order of AO dated 23/03/2022, therefore, both the orders of CIT (Appeal)/NFAC and AO become inconsequential hence both the orders to be declared as non-est and allow the additional ground. Hon'ble Bench, ITAT, Mumbai may please consider this additional ground in interest of justice.

The appellant craves leave to add, alter or delete all or modify any or all the grounds of appeal as and when advised as per law.

6. We have heard Ld. AR and Ld. DR and examined the record. At the outset, Ld. AR submitted that before passing the order by the Ld. CIT(A) u/s 250 of the Act which is subject matter of the present appeal, the assessment order was set aside by the Ld. PCIT, Thane-1, u/s 263 of the Act dated 13.03.2024. Ld. AR further submitted that the assessee has accepted the order passed u/s 263 of the Act and has not filed any appeal against the said order because the assessment order dated 23.03.2022 which is also the subject matter of the present appeal, has already been set aside and the matter was restored to the file of AO for compliance of the directions issued by Ld. PCIT u/s 263 of the Act. The appellant filed



a written confirmation of non-filing of appeal against order dated 13.03.2024 u/s 263 of the Act. The extract of the said written confirmation is extracted below:-



To
The Hon'ble Member
ITAT Bench "A"
Mumbai

Sub: Confirmation of Non filing of Appeal

Ref: NAME: ARHAM ANMOL PROJECTS PRIVATE LIMITED, AY 2016-17, ITA/4929/MUMBAI/2025

Hon'ble Sir

This is to Inform you that we have not filed any appeal against the Order u/s 263 of Income Tax Act, 1961 which was passed by Office of the Principal Commissioner of Income Tax, PCIT Thane-1 dated 13th March 2024.

Thanking You.

Yours Truly
For and behalf of
Arham Anmol Projects Private Limited (Appellant)

For ARHAM ANMOL PROJECTS PVT. LTD.

Mr Vinod Malde 
Director / Authorised Signatory

Date: 2025-09-22
Place: Thane.



7. Ld. AR further submitted that the assessment order as well as the impugned order has become inconsequential and both the orders be declared as non-est. Ld. AR further submitted that since the assessment order was set aside by the Ld. PCIT vide order dated 13.03.2024 passed u/s 263 of the Act, therefore the appeal before the Ld. CIT(A) which was dismissed vide impugned order dated 11.06.2025 has already become infructuous. Ld. AR further submitted that since the impugned order was passed ex-parte, therefore the assessee did not have any occasion to withdraw the said appeal and for these reasons, the additional ground for declaring the impugned order alongwith assessment order as non-est be allowed.
8. Ld. DR on the other hand submitted that there is no question of raising the additional ground in the present appeal as there is no requirement of declaring the impugned order as non-est alongwith assessment order. Since the assessment order was set aside by the order passed u/s 263 of the Act by the Ld. PCIT, there was no assessment order existing and such appellate order passed u/s 250 of the Act has become infructuous. It is therefore argued that since the impugned order passed u/s 250 of the Act has already become infructuous after passing of the order u/s 263 of



the Act, the present appeal is not maintainable and is liable to be dismissed having become infructuous.

9. We have considered the rival submissions and perused the record. The question arises whether the impugned order in the appeal before the Tribunal u/s 253 against the order passed u/s 250 of the Act which has been passed by the Ld. CIT(A) while disposing the matter which has already been become infructuous can be declared as non-est by this Tribunal u/s 254 of the Act. Section 254(1) of the Act read as under:-

“Section 254. (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.”

10. It is thus clear from section 254(1) of the Act, while disposing the appeal filed u/s 253 of the Act, the Tribunal has power to dispose of the matter as it thinks fit. It is a settled law that the Tribunal has power to pass such order as it thinks fit and therefore, the Tribunal can cancel or set aside the order passed by Ld. CIT(A). Admittedly, the impugned order has been passed ex-parte and also due to the ignorance by the Ld. CIT(A) of the order u/s 263 of the Act which was already passed before passing of the impugned order u/s 250 of the Act. On perusal of the



order u/s 263 of the Act, it is noticed that the said order is also passed ex-parte as it was mentioned in para 4 of the order that notice regarding final opportunity of hearing was issued on 20.02.2024, but no response was received, therefore the order was passed on the basis of material available on record. It is thus crystal clear that the assessment order, impugned order and the order passed u/s 263 of the Act, has been passed ex-parte as the assessee has not appeared before the authorities during the proceedings carried out by the concerned authority. Thus, it is evident that the impugned order is passed with respect to non existing assessment order on the date of passing the impugned order u/s 250 of the Act against which the present appeal has been filed. It is not made clear while raising the additional ground as to when the order passed u/s 263 became known to the assessee. In the absence of any submission, we presume that the said order has come to the knowledge of the assessee after passing of the impugned order by the Ld. CIT(A).

11. In these facts and circumstances of the case, we are of the considered opinion that since the impugned order is passed u/s 250 of the Act because of the ignorance of the order passed u/s 263 of the Act. Therefore on the date of passing the impugned order, there was no



assessment order existing which has been confirmed by passing the impugned order u/s 250 of the Act. Since the assessment order was already set aside by the Ld. PCIT u/s 263 of the Act, there is no need of declaring the same as non-est by this Tribunal. The impugned order passed u/s 250 of the Act, is therefore deemed to be cancelled as the assessment order confirmed by it was already non-est. The additional ground is disposed of accordingly in above terms. In view of decision on additional ground raised by the appellant, the decision on regular grounds in the appeal pales into insignificance as having become infructuous.

12. In the result, appeal filed by the assessee is disposed of accordingly in above terms.

Order pronounced in the open court on 13.10.2025

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Mumbai / Dated 13.10.2025
Dhananjay (Sr. PS)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai