

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.377/RPR/2025  
निर्धारण वर्ष / Assessment Year : 2015-16

TANSINGH  
H. No.124, Gidri,  
Rajnandgaon (C.G.)-491 441  
PAN: ADSPH4308K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Pr. Commissioner of Income Tax,  
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri Saad Kidwai, CIT-DR

सुनवाई की तारीख / Date of Hearing : 03.11.2025  
घोषणा की तारीख / Date of Pronouncement : 03.11.2025

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the order of the Ld. Pr. Commissioner of Income Tax, Raipur-1 (for short 'Pr. CIT') passed u/s.263 of the Income Tax Act, 1961 (for short 'the Act') dated 20.03.2025 for the assessment year 2015-16 as per the grounds of appeal on record.

2. At the very outset, it is noted that hearing of the present case had started since 08<sup>th</sup> July, 2025 and finally, it was taken as heard today i.e. 03.11.2025. In the entire span of time, the matter was posted for hearing on 11.08.2025, 01.09.2025, 15.09.2025, 09.10.2025 and 03.11.2025 and in all these occasions, there were neither any compliances from the assessee for hearing nor any adjournment application had been filed. Even when the matter was called for hearing today, there was none present from the assessee. That from record, it is amply clear that several opportunities have already been provided to the assessee which the assessee had not availed off and as per direction of the Hon'ble Apex Court in the case of **Ishwarlal Mali Rathod Vs. Gopal and Ors., passed in Special Leave Petition (Civil) Nos. 14117-14118 of 2021, order dated 20.09.2021**, wherein it has been held and observed that as on today the judiciary and the justice delivery system is facing acute problem of delay which

ultimately affects the rights of the litigant to access to justice and speedy trial. It cannot be disputed that due to delay in access to justice and not getting timely justice it may shake the trust and confidence of the litigants in the justice delivery system. Therefore, the Hon'ble Apex Court has directed specifically that adjournments should not be granted in a routine manner and mechanically and such grant of adjournment by the Courts should not be a cause for delay in dispensing justice. The assessee cannot be allowed to take undue advantage of the legal process for deliberately delaying the process of law. In this case, the assessee deliberately was absent from hearing from day one itself. There has been no efforts so to say that the assessee was conscious about the proceedings going on before the Tribunal. That any further adjournment would be against the directives of the Hon'ble Apex Court (supra.). The trust of the litigants in the judicial process needs to be upheld and thereby, considering the entire facts and circumstances, the submission of the Ld. CIT-DR are recorded and after careful consideration of the materials/documents available on record, the matter is heard.

3. This is a case where an order was passed by the Pr. CIT, dated 20.03.2025 for A.Y.2015-16 u/s.263 of the Act. The assessee being individual had filed return of income on 19.10.2022 in response to the notice u/s. 148 of the Act declaring total income of Rs.19,10,820/-. The

assessee derives income from the business of sales of foreign liquor and country liquor. During the course of assessment proceedings, the assessee submitted that the case deposits of Rs.1,23,14,705/- made by him in his bank account maintained with Punjab National Bank and Rs.12,76,500/- in Dena Bank was from sale of liquor and liquor business all the sales were done in cash. The A.O accepted the returned income and being satisfied with the reply of the assessee vide order dated 24.03.2023 u/s. 147/144B of the Act framed the assessment accordingly.

4. Later on, it was pointed out by the Internal Audit Party that quoting the case of CIT Vs. Mekala Bal Reddy, the Hon'ble High Court of Andhra Pradesh had cited that in liquor business net profit should be estimated to be 5% of the total sales of the assessee. Adhering to the said decision, 5% of the net profit of the total sales arrived at Rs.41,43,906/- (5% of Rs.8,28,78,128/-). Thus, estimated net profit arrives at Rs.41,43,906/- and there was also commission income of Rs.1,61,370/- and interest income of Rs.61,308/- totaling to Rs.43,66,584/-. As such, correct income of the assessee should have been calculated at Rs.43,66,584/- and not at Rs.19,10,820/- as has been calculated by the A.O and therefore, there had been an under assessment of Rs.24,55,764/- [Rs.43,66,584/- (-) Rs.19,10,820/-] and accordingly, under levy of tax of Rs.7,58,831/- plus applicable interest u/s. 234A/234B/234C of the Act.

5. Thus, it is noted that as per order of the Pr. CIT passed u/s. 263 of the Act, the department is aggrieved on two counts viz. **(i)** there has been under assessment of Rs.24,55,764/- and corresponding under levy of tax of Rs.7,58,831/- plus applicable interest under relevant provisions of the Act and **(ii)** since turnover of the assessee is Rs.8,28,78,128/-, the provisions of Section 44AB of the Act gets attracted. In these two areas, we find that there is no discussion by the A.O in the assessment order nor any enquiry has been conducted. That going through the assessment order, it is absolutely clear that such assessment has been done in a summary manner accepting the return income as well as the reply of the assessee. That on plain reading of Section 263 of the Act a/w. Explanation-2 of the said provision of the Act, since the assessment order has been passed without making inquiries or verification and the order is passed allowing relief without inquiring into the claim and also considering the deeming nature in Explanation-2, the assessment order, therefore, is erroneous in so far it is prejudicial to the interest of the revenue.

6. In the cases of **Rampyari Devi Saraogi Vs. Commissioner of Income-Tax, West Bengal, Calcutta, 67 ITR 84 (SC)** and **Smt. Tara Devi Aggarwal v. Commissioner of Income tax, West Bengal, 88 ITR 323 (SC)**, the Hon'ble Supreme Court upheld the Commissioners (CIT)'s revisional orders passed u/s. 263 of the Act where the A.O accepted the

returned income without making any proper inquiry. The Hon'ble Apex Court held that the assessment order passed without any enquiry results in loss of revenue and makes the order erroneous and prejudicial to the interest of the revenue. In the case of **Pr. CIT Vs. Paville Projects Pvt. Ltd. (2023) 453 ITR 447 (SC)**, the Hon'ble Supreme Court set-aside the High Court judgment and restored the order of the Commissioner of Income Tax u/s. 263 of the Act. The Hon'ble Apex Court found that the A.O's original assessment order accepting the substantial deduction as "cost of improvement" without proper application of the relevant legal provision was both erroneous and prejudicial to the interest of the revenue. In the aforesaid judgment, on perusal of the assessment order and relying on the judgment passed in the case of **Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC)**, it was held by the Hon'ble Apex Court that the order passed by the A.O was erroneous as well as prejudicial to the interest of the revenue and thus, the Hon'ble High Court had committed a very serious error in setting aside the order passed by the Commissioner of Income Tax u/s.263 of the Act. With the above observations, the Hon'ble Apex Court allowed the appeal and set-aside the impugned order passed by the Hon'ble High Court restoring the order passed by the Commissioner of Income Tax in exercise of powers u/s. 263 of the Act.

7. Reverting to the facts of the present case, the Pr. CIT in the order passed u/s. 263 of the Act has clearly made a case that there has been under assessment in the case of the assessee and subsequent under levy of tax a/w. applicable interest. Further, there has been a turnover of Rs.8,28,78,128/-, for which, provisions of Section 44AB gets attracted. However, these areas have neither been enquired into nor verified by the A.O during the assessment proceedings and the entire assessment order is silent on these aspects.

8. Considering the aforesaid examination of the facts on record as well as legal spectrum enshrined in the tax law jurisprudence as emanated from the aforesaid judicial pronouncements, we are of the considered view that the Pr. CIT is correct in passing order u/s.263 of the Act holding the assessment order to be erroneous in so far it is prejudicial to the interest of the revenue. The order passed by the Pr. CIT u/s.263 of the Act is upheld.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 3<sup>rd</sup> November, 2025.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 03<sup>rd</sup> November, 2025.  
SB, Sr. PS

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

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.