

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'C': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No.3112/Del/2025
[Assessment Year:2020-21]**

| | | |
|--|----|---|
| Microteck Infrastructure Private Limited, H-41, Main Rohtak Road, Udhyog Nagar, Delhi-110041 | Vs | PCIT, C.R. Building, Delhi-110095 |
| PAN AAGCM6086D | | |
| Appellant | | Respondent |

| | |
|-------------|--------------------------------|
| Assessee by | Shri S.S. Nagar, CA |
| Revenue by | Shri Mukesh Kumar Jha, CIT(DR) |

| | |
|------------------------------|-------------------|
| Date of Hearing | 18.12.2025 |
| Date of Pronouncement | 11.03.2026 |

ORDER

PER AMITABH SHUKLA, AM,

The captioned appeal has been preferred by the assessee against order dated 18.03.2025 of the Pr. Commissioner of Income Tax-4, New Delhi, [hereinafter referred to as 'ld. PCIT'] arising out of assessment order dated 26.09.2022 passed u/s 143(3) of the Income Tax Act, 1961 pertaining to Assessment Year 2020-21. The word 'Act' herein this order would mean Income Tax Act, 1961.

2. The assessee has raised following grounds of appeal:-

1. *Whether on the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition*

of Rs. 9,11,40,892 as bogus purchases u/s 37(1) of the Income Tax 1961 as the assessee has not furnished any documentary evidence in respect of business activities carried out by the parties (seller) during the relevant year ?"

2. Whether on the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 89,14,186/- on account of disallowance of sundry creditors u/s 68 of the Income Tax Act, 1961" as the assessee had failed to furnish the copy of account & confirmation of the said transaction during the assessment proceedings inspite of providing sufficient opportunity by issuing notices u/s 142(1)/show cause notice.

3. The principal controversy raised by the assessee through the impugned appeal is regarding the invocation of revisionary authority under section 263 by the ld. PCIT, Delhi-4. It is the case of the assessee that the impugned assessment order under section 143(3) dated 29.09.2022 does not falls in the category of an order being erroneous in so far as it is prejudicial to the interest of the Revenue and hence deserves to be set-aside and quashed.

4. We have heard rival submissions in the light of material placed on records. At the outset, we deem it appropriate to briefly recapitulate the facts recorded by ld. PCIT in his impugned order as under:-

"..... The brief facts emanating from the record is that the assessee filed its Return of Income for the Financial Year (F.Y.) 2019-20, relevant to Assessment Year (A.Y.) 2020-21 on 13.02.2021, declaring total income of Rs. 21,61,28,860/-. Subsequently the case was selected for scrutiny through CASS.

2. Thereafter, the assessment was finalised under section 143(3) read with Section (r.w.s.) 144B of Income Tax Act,

1961 (hereinafter called 'the Act') on 26.09.2022, accepting return income of Rs 21,61,28,860/-

3. On perusal of the assessment records, it was observed that during the course of assessment proceedings, with respect to the issue of difference between closing and opening stock of WIP, the assessee has claimed that, the difference had arisen because in A.Y. 2019-20, closing WIP of Rs. 5,59,42,71,022/- was shown in column 2 of schedule part-A-manufacturing account of ITR whereas during the year under consideration, opening WIP of the same amount was reflected in column 7 of schedule part-A trading account. However in support of its claim, assessee had only attached relevant extract of ITR. Further on perusal of Note 18 of the financial statements, assessee has also made additions in inventories to the tune of Rs. 60,39,33,050/- during the year under consideration. During the course of assessment proceedings, the FAU has not verified this issue with proper justification and supporting evidences/purchase register/ confirmation etc while accepting your contention.

3.1. On perusal of Balance Sheet, it was noticed that assessee had shown sundry creditors to the tune of Rs. 7,79,15,547/- as on 31.03.2020, During the course of assessment proceedings, the FAO has accepted the contention of the assessee without making any enquiry/investigation. Assessee had submitted details of sundry creditors as on 31.03.2020 wherein no address/PAN/ age-wise details were provided during the course of assessment proceedings. The FAU had not examined sundry creditors with proper bills/supporting evidence of purchases/age-wise analysis etc.

3.2. On perusal of Balance Sheet, it was noticed that the assessee had shown other current liabilities of Rs. 3,07,17,550 as on 31.03.2020. During the course of assessment proceedings, the assessee had furnished head wise details of the same. Assessee had furnished only part supporting evidences (for ESIC, PF, TDS/TCS) in support of its claim.

3.3. On perusal of assessment records, it was noticed that the FAU had sent notice u/s 133(6) of Income Tax Act to the following persons with respect to the advance received

by assessee against booking of property other loans during the year:

- 1. Sh. Shivam Agarwal, PAN: AGWPA2101Q*
- 2. Sandhya Chauhan, PAN: AMXPC9393H*
- 3. Ashwani Syal, PAN: AIGPS2859H*
- 4. Ashwin Singh, PAN: BJMPS0933C*
- 5. Raman Krishnamoorthy, PAN: AFJPK5056N*
- 6. Hemanshu Pandita, PAN: BWEPP3351C*
- 7. Amit Kumar Verma, PAN: ADGPV5947E*
- 8. Amit Singh Karwal, PAN: DHIPS4975Q*

However, only confirmations and other details were received from the persons mentioned at SI No. 1,2,5 and 6. Further in support of advance received against booking for EWS persons, assessee has only submitted policy for allotment of plots/ Flats and copies of receipts of 04 persons out of 132 persons/ parties. No allotment letters were provided during the assessment proceedings.

3.4 On perusal of Note 5 to the Financial Statements, it was further noticed that assessee has squared off unsecured loans to the tune of Rs. 40,60,00,000/- (being Unsecured loan as on 31.03.2020 is 3,24,69,00,069/- and Rs. 3,65,29,00,069/- as on 31.03.2019). The FAU had not examined this issue with details of loans/ confirmation/ITR etc.

3.5. On perusal of P&L Account, it was further observed that assessee had made purchase of Rs. 1,87,24,216/- during the year under consideration. The FAU had not examined this issue with supporting evidences and confirmations.

3.6. Further on perusal of computation, it was further noticed that assessee has set off losses of Rs. 2,41,87,839/- during the year under consideration and submitted ITR Acknowledgment and year wise details of losses However, assessee has not submitted complete details of the same. It was further observed that assessee had opted lower tax rate u/s 115BA/of Income Tax Act. During the course of

assessment proceedings, the FAO had not examined whether all conditions contained in subsection (2) of section 115BAA of IT Act have been satisfied or not with supporting evidences.

3.7. On perusal of financial statement, it was further noticed that there has been increase in Auditor's fee of Rs. 2,00,000/- as compared to the preceding previous year of Rs. 10,000/-. During the assessment proceedings, the FAO had not examined this issue with supporting evidences.

4. The facts mentioned above shows that the aforesaid order has been passed without making inquiries or verification which should have been made. The aforesaid order passed by the FAO in respect of A.Y. 2020-21, is, prima facie erroneous in so far as it is prejudicial to the interests of revenue.....”

Accordingly, the ld. PCIT proceeded to issue a show-cause notice under section 263 vide ITBA/COM/F/17/2023-24/1059671197(1) dated 12.01.2024

5. Thus, the Ld. PCIT upon perusal of the impugned assessment order concluded that the ld. AO had not conducted necessary enquiries and that therefore the impugned order fell within the mischief of Explanation-2 to Section 263 so as to assume the character of an order being erroneous and so far it is prejudicial to the interest of the Revenue. The ld. PCIT relied upon judicial precedences governing the matter. The concluding observations of the ld. PCIT are reproduced hereunder:-

“7 In view of the above discussion, I find that the assessment order passed by the AO dated. 26.09.2022 is erroneous and prejudicial to the interest of revenue.

8 In this regard, reliance is also place on the following decisions of Hon’ble Supreme Court and the Hon. High Court where it has been that for the lack of enquiry by the assessing officer, the Commissioner of Income Tax is justified in

assuming the jurisdiction u/s 263 of the Income Tax Act and cancelling the assessment order.

In the case of CIT vs Leisure Wear Exports Ltd. (2012) 341 ITR 166 (Del), the Hon'ble High Court has held that "If due to an erroneous order of the AO the revenue is losing tax lawfully payable by a person, it would be certainly prejudicial to the interest of revenue".

In the case of Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC), the Hon'ble Supreme Court held that "where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263 was justified."

The Hon'ble Delhi High Court in the case of CIT Vs Shri Braham Dev Gupta in ITA no 907/2017 and 1162/2017 has clearly decided that Pr. Commissioner of Income tax can invoke the provision of section 263 of Income Tax Act where AO has not made adequate enquiry and verification. In this matter, SLP of the assessee has also been dismissed by Hon'ble Apex Court.

The Hon'ble ITAT Delhi in the case of Ankush Garg v CIT, Rohtak in ITA No 2287 & 2288/Del/2015 dated 21.05.2019, upheld the Pr. CITs action u/s 263 by holding that the order of the AO was cryptic, and was not passed after due examination and verification of certain issues and therefore, there was an error on the part of AO which led to a correct conclusion of the CIT that the order of the AO was not only erroneous but also prejudicial to the interest of Revenue. The Hon. Supreme Court in Rampyari Devi Saraogi v CIT 67 ITR 84 while taking note of the fact that the AO had concluded the assessment in "undue hurry" by passing a short, stereotyped assessment order, without making any inquiries, upheld the revision done by the CIT.

The Hon'ble Delhi High Court in the case of CIT vs. DLF Power Ltd. (2011) ITA no, 973/2011, held that if the Assessing Officer keeps on record and does not carry out necessary investigation which are required to verify the correctness of the averments, there is an error in the sense that he has failed to carry out the requisite enquiry which can be rectified in a revision. The Hon'ble Delhi High Court clearly gives the power to the CIT to examine whether the issue in question was raised before the Assessing Officer considered and verified or course adopted is permissible in the instant case. The Order of the Assessment Order clearly reveals that the AO had not even raised such issue and if had raised, had not considered and verified for either acceptance or rejection.

Hon'ble Delhi High Court in the case of Duggal & Company Vs. CIT 1996 220 ITR 426 (Delhi) has also held the Commissioner was perfectly competent to exercise power under Section 263 whenever he found, prima facie, there was need to enquire if the interest of the Revenue had suffered before an Order of Assessment. The basis for the Order of the Commissioner is a question of fact and whether it is correct or not shall have to be found out after an enquiry by the Income Tax Officer. The fact that the AO has omitted to enquire into the question is enough for the Commissioner to assume jurisdiction under Section 263 of the Income Tax Officer.

The Hon'ble Delhi High Court in the case of Gee Vee Enterprises Vs. Additional CIT (1995) 1999 ITR 375) where the Hon'ble Delhi High Court held that Income Tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this contract. It is because it is incumbent on the Income Tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.

The Hon'ble Supreme Court in the case of Tara Devi Aggarwai Vs. CIT, (1973) 88 ITR 323 (SC) held that it is not necessary for the Commissioner to make further enquiries before cancelling the Assessment Order of the AO and Commissioner can regard the Order as erroneous on the ground that in the circumstances the case the AO should have made further inquiries before accepting the statements made by the assessee in his return.

9. In view of the facts and legal position, I hold the Assessment Order passed u/s 143(3) r.w.s 144B of the Income Tax Act, 1961 on 26.09.2022 for the A.Y. 2020- 21 has been passed without making necessary examination/verification/enquiries on the issue discussed above and therefore, I hold the Assessment Order as erroneous and prejudicial to the interest of the revenue. Accordingly, the said Assessment Order is hereby set aside to the file of the Assessing Officer on the above issues. Needless to say, the Assessing Officer shall make necessary examination /verification and enquiries in respect of the above referred issues after giving adequate and reasonable opportunity to the assessee.....”

6. We at this stage for a clear understanding of the facts also deem it necessary to examine the relevant assessment order dated 26.09.2022 reproduced hereunder:-.

“.....1. Facts of the case in brief: The Assessee Company filed its return of income for Asst. Yr. 2020-21 on 13/02/2021, showing total income of Rs.21,61,28,860/-. The case was selected for scrutiny assessment through CASS. According to the description of the reasons, firstly it is stated that the assessee has not complied with ICDS provisions. Secondly, large difference in opening stock and closing stock of previous year is highlighted for examination. Lastly, high liabilities as compared to low income are selected for scrutiny.

2. *Details of opportunities given:*

| Type of notice/communication | Date of notice/communication | Date of compliance given | Response of the assessee received/not received | Date of response received | Response if (Full/part/adjournment) | Remarks if any. |
|------------------------------|------------------------------|--------------------------|--|---------------------------|-------------------------------------|-----------------|
| 143(2) | 29.06.2021 | 14.07.2021 | Not received | - | - | - |
| 142(1) | 01.11.2021 | 15.11.2021 | Not received | - | - | - |
| 142(1) | 19.11.2021 | 26.11.2021 | Received | 24.11.2021 | Part | - |
| 142(1) | 14.12.2021 | 20.12.2021 | Not received | - | - | - |
| 142(1) | 05.01.2022 | 10.01.2022 | Received | 10.01.2022 | Full | - |
| 142(1) | 18.08.2022 | 26.08.2022 | Received | 26.08.2022 | Full | - |
| SCN | 29.08.2022 | 07.09.2022 | Received | 07.09.2022 | Full | - |

3. *Sl. No. 1. Cases where variation is not proposed:*

3.1 *Complete description of issues (issue wise): Assessee Company is engaged in the business of developing/operating/sub-dividing of real estate into different lots including its selfowned buildings. During the year under scrutiny, the company has reported total turnover of Rs.2,98,72,58,711/-, interest income of Rs.10,10,722/- and profit on sale of asset amounting to Rs.25,631/-. During the year, the company has also claimed set-off of business loss amounting to Rs.2,22,58,828/- & of unabsorbed depreciation amounting to Rs.19,29,011/-.*

The case has been selected for scrutiny on the following grounds:

| Sr. No. | Issues | Description of issues |
|---------|----------------------------|---|
| 1 | ICDS Compliance adjustment | Description of issues Non compliance to ICDS |
| 2 | Stock Valuation | Large difference between the opening stock of currency year and closing stock of previous year. |
| 3 | High Creditors/liabilities | High liabilities as compared to low income/receipts |

3.2 *Synopsis of all submissions of the assessee relating to the issue and indicating the dates of submission: In response to this office notices u/s 142(1), the assessee has claimed that during the year, it was engaged in the business of developing/operating/sub-dividing of real estate into different lots including its self owned buildings. According to it, Draft ICDS on real estate transactions has not been notified and therefore the assessee could not comply with the ICDS.*

With respect to the issue of difference between closing stock of previous year and opening stock of current year, the assessee has claimed that there has been no change in the method of valuation of stock in the present year. According to the assessee, the difference has arisen because in A.Y. 2019-20, closing WIP of Rs.5,59,42,71,022/- was shown in column 2 of schedule part-A-manufacturing account of the ITR whereas during the present year opening WIP of the same amount is reflected in column 7 of schedule part-A-trading account. In support, the assessee has enclosed relevant extract of ITR filed for both the years. In verification of high liabilities, the assessee has submitted that it has received advance against booking amounting to Rs.52,61,48,491/-, other current liabilities of Rs.3,07,17,551/- & sundry creditors amounting to Rs.7,79,15,548/-. Verifiable details of customers were submitted for verification of advance received against booking. With respect to sundry creditors, confirmation of account was submitted for record. The assessee has submitted supporting evidence of payment of statutory liabilities as well.

3.3 *Summary of information/evidence collected which proposed to be used against it (attach documents if required). - Nil.*

3.4 *Reasons for inference drawn that no variation is required on this issue: Reply of the assessee & documentary evidences submitted in this regard were considered satisfactory and no valid reason could be found for making any addition to the total returned income.*

| <i>Sr. No.</i> | <i>Description</i> | <i>Amount (in INR)</i> |
|----------------|---------------------------------------|--------------------------|
| <i>1</i> | <i>Income as per Return of Income</i> | <i>Rs.21,61,28,860/-</i> |

| | | |
|---|------------------------------|--------------------------|
| | <i>filed</i> | |
| 2 | <i>Total assessed income</i> | <i>Rs.21,61,28,860/-</i> |

Assessed under section 143(3) read with section 144B of the Income Tax at Rs.21,61,28,860/-. Computation of income and demand notice u/s 156 of the Act is attached.”

7. The Id. Counsel for the assessee vehemently argued in favour of the order of the Id. Assessing Officer and stated that it had provided all details to the Id. AO, who had done all the enquiries before concluding and accepting returned income and hence no case for invocation of any action under section 263 was made out. In support of his contentions, the Id. Counsel submitted before us a paper book. It was argued that it had provided all the said details to the Id. PCIT to allude the correctness of the claims of the assessee. The Id. Counsel submitted that consequently the action of the Ld. PCIT is untenable.

8. Per contra, the Id. CIT-DR, Shri Mukesh Kumar Jha, vehemently argued in support of order of Id. PCIT submitting that revisioning authority u/s 263 has been rightly exercised by him.

9. The controversy at hand thus brings us to two issues firstly whether all the required details were filed by the assessee before the Id. AO and secondly whether the Id. AO had conducted necessary enquiries in the case. We have noted that on both the counts the conduct of the assessee and the Id. AO has been found to be wanting. To illustrate sample

instances, in para-3.3 of his order, the Id. PCIT had noted that the assessee had received advance against booking of property and other loans and that the Id. AO had issued notices u/s 133(6) to some eight parties out of which confirmations and other details in respect of only 4 parties were provided to the AO. Through its submission dated 12.01.2024 extracted on pages 6 to 12 of the order under section 263, para-8 on page-11 of the order, the appellant admitted non-supply of these confirmations to the Id. AO and provided the same to the Id. PCIT. Similarly, as regards the advances received from total 126 EWS Persons, the assessee on para-9 of page-11 of the impugned order admitted that it had given only four confirmations to the Id. AO during assessment proceedings. The argument of the assessee of having provided all the details and informations to the Ld AO therefore is not supported by evidence on records. The case was selected for scrutiny, inter alia, to examine high liabilities vis a vis low income. It is undisputed facts on records that all the evidences to prove the Bonafide's of contemporaneous liabilities was not provided to the AO and hence the assessee cannot escape the blame of inadequate and incomplete submission of details and evidences.

10. Coming to the next argument as to whether the Id. AO had conducted any independent enquiries his own, we have noted that the assessment order is totally silent on the issue. In spite of the case being selected in the complete scrutiny category for intensive examination and

verification, there is nothing on record to suggest that any such exercise was undertaken by the Id. AO. The Id. AO has merely passed the order in a mechanical and summary manner by simply placing on records the details filed by the assessee. The wanting conduct and investigative failure of the Id. AO is evident from the fact that the Id. AO did not care to note that the details filed by the assessee were incomplete and hence incorrect. The Id. AO was expected to conduct a detailed enquiry into the affairs of the assessee company considering that the case was selected for scrutiny for specific abnormalities, and shortcomings alluded in the reasons thereof. Accordingly, we find force in the argument of Ld. PCIT that the order has been passed in a 'mechanical, stereotype and without any application of mind'.

11. It is trite law reiterated by Hon'ble High Courts and the Hon'ble Apex Court that a Commissioner of Income Tax is justified in assuming the jurisdiction u/s 263 of the Income Tax Act and cancelling the assessment order where he/she finds the lack of enquiry by an assessing officer. Hon'ble Delhi High Court in the case of CIT vs Leisure Wear Exports Ltd. (2012) 341 ITR 166 (Del), holds the view that "***If due to an erroneous order of the AO the revenue is losing tax lawfully payable by a person, it would be certainly prejudicial to the interest of revenue***". The act of non-enquiry and acceptance of incomplete details by the Id. AO has indeed contributed to passing of an assessment order in which revenue

has potentially lost lawful revenue. Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC), has held that “*where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263 was justified.*” Similarly, Hon'ble Delhi High Court in the case of CIT Vs Shri Braham Dev Gupta in ITA no 907/2017 and 1162/2017 has postulated that a revisionary authority can invoke the provision of section 263 of Income Tax Act where AO has not made adequate enquiry and verification. The SLP of the assessee has also been dismissed by Hon'ble Apex Court. Further, the Hon'ble Delhi High Court in the case of CIT vs. DLF Power Ltd. (2011) ITA no, 973/2011, has held that if the Assessing Officer keeps on record certain submissions/details and does not carry out necessary investigation which are required to verify the correctness of the averments, there is an error in the sense that he has failed to carry out the requisite enquiry which can be corrected through revisionary proceedings u/s 263. We have also noted that Hon'ble Delhi High Court in the case of Gee Vee Enterprises Vs. Additional CIT (1995) 1999 ITR 375) has held that an Income Tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is

his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this contract. It is because it is incumbent on the Income Tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.

12. Before us, the Id. Counsel for the assessee also vehemently argued that it had provided all the details/evidences in respect of allegations made in the notice u/s 263 issued to it to the Id. PCIT and that therefore there was no case for invocation of authority under section 263. We have noted that it is immaterial as to whether the details and evidences were provided to the assessee during revisionary proceedings or not. The issue at hand is whether all the details and evidences were provided to the Id. AO during assessment proceedings and whether it conducted necessary enquiries and verification in the said details or not. Facts of the case discussed hereinabove clearly alludes that the assessee was at fault in not providing all the details to the Id. AO and who in turn was also at fault for not conducting any verification or enquiries in the same. Accordingly, we

are of the considered view that the order under section 263 dated 18.03.2025 of the Ld. PCIT, Delhi-4 is based upon correct understanding and appreciation of the facts of the case and therefore does not require any intervention at this stage. We therefore confirm the order of the ld. PCIT. The appeal of the assessee is therefore dismissed.

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

Order pronounced in the open court on 11th March, 2026.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated:. 11.03.2026

Shekhar

Copy forwarded to:

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

Sd/-
[AMITABH SHUKLA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi