

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI JAGADISH, ACCOUNTANT MEMBER

ITA No.2148/Mum/2024
ASSESSMENT YEAR: 2015-16

Starshine Land Developers Private Limited 77/78 Nilkamal House, Road No.13/14, M.I.D.C., Andheri(East), Mumbai-400093 PAN: [AAKCS7310Q]	Vs.	Principal Commissioner of Income Tax, Mumbai-5 Room No-515, 5 th Floor, Aayakar Bhavan, MK Road, Marine Lines, Mumbai-400020
(Appellant)		(Respondent)

Appellant by	Shri Vipul Joshi & Ms. Dinkle Hariya
Respondent by	Shri Arun Kanti Dutta – CIT DR

Date of Hearing	22.01.2026
Date of Pronouncement	27.02.2026

ORDER

Per: SHRI JAGADISH, A.M.:

1. This appeal filed by the assessee is directed against the order of the Ld. Principal Commissioner of Income Tax-5, Mumbai passed u/s 263 of the Income-tax Act, 1961 dated 18.03.2024 for the assessment year 2015-16.

2. The brief facts are that the assessee is in the business of builders and developers and filed return of income on 29.11.2015, showing loss of Rs.5,91,33,210/-. The assessment was completed u/s 143(3) on 23.12.2017 accepting the returned loss. Subsequently the assessment was reopened in view of judgment of the Hon'ble Delhi High Court in the case of CIT vs Ansal Housing Finance and Leasing Company Ltd and the judgment of the ITAT Ahmedabad in the case of Emitici Engineering Ltd Vs ACIT that the assessee has finished goods in the form of unsold inventory at Rs.54,26,49,021/-, but has not offered house property income on the above unsold inventory . The reasons recorded clearly state that the assessee had not offered house property income on the unsold inventory and therefore income of Rs.4,34,11,922/- was believed to have escaped assessment. Accordingly, notice u/s 148 dated 26.03.2021 was issued. In response to notice u/s 148, the assessee furnished return of income on 19.04.2021 declaring NIL income and claiming current year loss of Rs.5,91,33,210/-. Consequent notice u/s 143(2) dated 23.06.2021 was issued and thereafter notice u/s 142(1) dated 07.12.2021 was issued calling for details. It is also noted by the Assessing Officer that the assessee sought reasons for reopening which were supplied and objections were filed on 10.12.2021 and rebuttal was issued on 26.03.2022 rejecting assessee's objection. The assessing Officer, immediately thereafter passed reassessment order on 29.03.2022 accepting the returned loss. In the reassessment order, after recording the above procedural narration, the Assessing Officer has straightaway concluded the assessment, without recording any finding whatsoever on the taxability of notional ALV on unsold flats, which was the very basis for reopening. There is no discussion or adjudication on the escapement issue. The relevant part of order of Assessing Officer is reproduced as under:-

“Accordingly, notice u/s 148 dated 26.03.2021 was issued to the assessee. In response to the notice u/s 148 the assessee furnished Return of Income on 19.04.2021 declaring NIL Income claiming current year loss to the tune of Rs.59133210/-. Consequently, Notice u/s 143(2) dated 17.06.2021 and 23.06.2021 were issued. Thereafter notice u/s 142(1) dated 07.12.2021 requesting the assessee to furnish detailed documentary evidences to verify the alleged transactions. The assessee requested for reasons for reopening which has been provided in due course. The assessee furnished detail documentary evidences in support of claim which were duly considered. On 10.12.2021 the assessee raised objection on certain issues against reopening of the case. Rebuttal of the same was duly issued. Order u/s 143(3)/147 read with section 144B of the I.T Act 1961. ”

3. The PCIT on perusal of assessment order has found the order erroneous in so far as prejudicial to the interest of revenue within the meaning of provisions of section 263 of the IT Act as the Assessing Officer has failed to examine the issue for which assessment was reopened. The assessee is before us against the above order.
4. The Ld. AR submitted that the Assessing Officer had issued notice u/s 142(1) and obtained details and therefore it should be presumed that the Assessing Officer had applied his mind. He further submitted that the amendment to section 23(5) has been brought on the statute only w.e.f. AY 2018-19 and therefore no notional ALV could be brought to tax for the year under consideration. The Ld. AR placed reliance on the decisions in *Dosti Realty Pvt. Ltd., Shamdarshan vs. DCIT [(2025) 177 Taxmann.com 317 (Mumbai)]*, *DCIT vs. Neepa Real Estate Pvt. Ltd. [(2024) 116 ITR (T) 247 (Mumbai)]*, and *C.R. Developments Pvt. Ltd. vs. JCIT[ITA No.4277/Mum/2012]* The Ld. AR further relied upon the judgment of the Hon'ble Supreme Court in *CIT vs. Kelvinator of India*

Ltd.(320 ITR 561) and the decision of the Hon'ble Bombay High Court in *Marico Ltd. vs. ACIT(425 ITR 177)* to contend that once queries are raised, application of mind by the Assessing Officer should be presumed.

5. Per contra, the Ld. DR strongly supported the order of the Ld. PCIT and submitted that the reassessment order itself demonstrates complete non-application of mind. The Ld. DR placed reliance on the judgment of the Hon'ble Supreme Court in *PCIT vs. Paville Projects Pvt. Ltd. [(2023) 149 taxmann.com 115 (SC)]* to contend that lack of proper enquiry justifies revision u/s 263. The Ld. DR further relied on the decision of the Hon'ble Bombay High Court in *CIT vs. Gundecha Builders [(2019) 102 taxmann.com 27 (Bom)]* and *CIT vs. Sane & Doshi Enterprises [(2015) 58 Taxmann.com 111 (Bombay)]* to submit that the issue of notional ALV on unsold flats is a legally examinable issue and failure of the Assessing Officer to examine the same renders the assessment order erroneous and prejudicial to the interests of the revenue.
6. We have heard the rival submissions and perused the material available on record. The legal position governing exercise of revisional jurisdiction under section 263 is well settled. The Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. vs. CIT (243 ITR 83)* has held that the Commissioner can revise an order only when the twin conditions, the order being erroneous and prejudicial to the interests of the revenue are satisfied. An order becomes erroneous when it is passed on incorrect assumption of facts or incorrect application of law or without application of mind.

7. The scope of section 263 has been further widened and clarified by insertion of Explanation 2 to section 263 by the Finance Act, 2015 with effect from 01.06.2015. Explanation 2(a) specifically provides that an order shall be deemed to be erroneous insofar as prejudicial to the interests of the revenue if it is passed without making enquiries or verification which should have been made.
8. In the present case, the reasons recorded for reopening clearly and specifically flagged the issue of taxability of notional ALV on unsold flats. Therefore, the Assessing Officer was duty bound to examine this issue in a focused and meaningful manner. The reopening itself was founded on the belief of escapement on this precise issue. Hence, the enquiry on this aspect was not optional but mandatory. However, on perusal of the reassessment order, we find that except for a mechanical narration of issuance of notices and filing of replies, there is absolutely no discussion, verification, analysis or finding on the issue of notional ALV. The order is completely silent on the escapement issue. There is nothing on record to demonstrate that the Assessing Officer formed any opinion after examining the facts and applicable law.
9. The contention of the Ld. AR that issuance of notice u/s 142(1) raises a presumption of application of mind is not acceptable in the facts of the present case. The Hon'ble Delhi High Court in *Gee Vee Enterprises vs. Addl. CIT* (99 ITR 375) has held that failure to make enquiries which are called for renders the order erroneous. Similar view has been taken by the Hon'ble Supreme Court in *Rampyari Devi Saraogi vs. CIT* (67 ITR 84) and *Tara Devi Aggarwal vs. CIT* (88 ITR 323). Further, the Hon'ble Supreme Court in *CIT vs. Amitabh Bachchan* (384 ITR 200) has held that where the Assessing Officer has not made proper enquiry, the Commissioner is justified in invoking section 263.

10. The reliance placed by the Ld. AR on *Kelvinator of India Ltd.* and *Marico Ltd.* is misplaced. Those decisions deal with the scope of reopening and change of opinion. The present controversy is not about validity of reopening but about lack of enquiry in the reassessment proceedings. Likewise, the decisions relied upon by the Ld. AR on the merits of section 23(5) pertain to taxability of notional rent and the same are left open to be examined by the Assessing Officer in the set aside proceedings.

11. The argument of "possible view" also does not assist the assessee. For invoking the doctrine of possible view, there must be material to demonstrate conscious application of mind by the Assessing Officer. In the present case, the reassessment order does not reflect any such application of mind. Therefore, this is a clear case of lack of enquiry and not a case of inadequate enquiry.

The Hon'ble Supreme Court in *PCIT vs. Paville Projects Pvt. Ltd.*, as relied upon by the Ld. DR, has reiterated that where the assessment is completed without proper enquiry, the Commissioner is well within his jurisdiction to invoke section 263. The facts of the present case squarely fall within the ratio of the said judgment.

12. Considering the totality of facts and circumstances of the case, we are of the considered opinion that the Assessing Officer failed to examine the very issue for which the case was reopened. Therefore, the reassessment order is erroneous insofar as it is prejudicial to the interests of the revenue. The Ld. PCIT has rightly invoked the provisions of section 263. We, however, make it clear that we have not expressed any opinion on the merits of the addition.

13. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 27/02/2026

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(JAGADISH)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27/02/2026.

Ashwani Rao

Sr. Private Secretary

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. The CIT
4. The CIT (Appeals)
5. The DR, I.T.A.T.

By order

(Assistant Registrar)
ITAT, Mumbai