

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1915/Mum/2023  
(A.Y. 2018-19)**

M/s RDC Ventures Office No.-110 Ridhhi Sidhhi Premises Society, Near Sahakar Talkies Tilak Nagar, Chembur (West) Mumbai- 400089	Vs.	Principal Commissioner of Income Tax-27 Room No. 401, 4 <sup>th</sup> Floor, Tower No. 6, Vashi Railway Station, Commercial Complex, Vashi, Navi Mumbai -400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAKFR0914Q		
Appellant	..	Respondent

Appellant by :	Dhran Gandhi
Respondent by :	Sanyogita Nagpal

Date of Hearing	29.11.2023
Date of Pronouncement	09.02.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. Pr.CIT(A)-27, Mumbai dated 30.03.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

- “1. The order u/s 263 of the Act dated 30.03.2023 is bad in law and therefore, should be set aside.
2. The Ld. PCIT erred in setting aside the order of the Learned Assessing Officer dated 02.03.2021 on the ground that the same is erroneous and prejudicial to the interest of revenue.
  - a. The Ld AO has applied his mind to the issues under consideration and has made proper inquiries and therefore, the order u/s 143(3) of

*the Act dated 02.03.2021 is not erroneous and prejudicial to the interest of the revenue.*

*b. The issues being debatable issues, cannot be subject matter of revision u/s 263 of the Act, as the order u/s 143(3) of the Act dated 02.03.2021 cannot be considered as erroneous and prejudicial to the interest of the revenue.*

3. *The Ld. PCIT had no jurisdiction to pass order u/s 263 of the Act dated 30.03.2023.*

4. *The Ld. CIT, has violated principles of natural justice, by not considering the submissions filed by the assessee in passing order u/s 263 of the Act dated 14.03.2023 and by changing the basis of invoking jurisdiction itself*

5. *The Ld CIT, has erred in setting aside the assessment order for making fresh inquires and verification.*

6. *The appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing.”*

2. Fact in brief is that return of income declaring total income of Rs.228, 82,260/- was filed on 29.08.2018. The case was selected for scrutiny assessment under the E-assessment Scheme 2019 on the following issues:

“i. Income from real business:

ii. Unsecured Loans:

A notice u/s 143(2) dated 22.09.2019 was issued and served upon the assessee. The assessment u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act was finalised on 20.03.2021 by accepting the income returned by the assessee.

3. Subsequently, the ld. Pr.CIT, Mumbai-27 issued a notice u/s 263 of the Act on 01.03.2023 and 03.03.2023. The relevant extract of the notice issued is reproduced as under:

“1. On the basis of details available on record, it is seen that:

1. *The assessee is builder/ developer and engaged in construction of housing Projects.*

2. *On perusal of Profit & Loss A/c., it is seen that during the year under consideration the assessee has shown Sales of Rs.15,53,02.580/- and Closing Finished Goods at Rs.*

15,27,80,503/- Further assessee has claimed expenses under the head Interest Expenses of Rs. 1,90,10,995/- and TDR Expenses of Rs 5,00,000/-

### **ISSUE NO. 1**

On carefully considering the above facts, it is seen that assessee is builder/developer and engaged in construction of housing projects. On verification of the details submitted during the course of assessment proceedings, it is not specifically mentioned that whether assessee is following percentage completion method or project completion method for recognizing the revenue. However, as per the details submitted, it is seen that assessee is following project completion method for recognizing the revenue.

On verification of the Profit & Loss A/c., it is seen that assessee has debited an amount of Rs.1,90,10,995/- during the year. The Hon'ble ITAT, Mumbai in the case of Wallstreet Construction Ltd. Vs. JCIT has decided that where the assessee is following project completion method of accounting, the interest identifiable with that project should be allowed only in the year when the project is completed and the income from that project is offered for taxation.

Keeping in view of the above, it is seen that assessee has completed two projects during the year and one project has been initiated. Taking into consideration that assessee is following project completion method, the interest on loans taken during the year is not allowable in the year under consideration (following Wallstreet Construction decision). On verification of the detail of unsecured loans, it is seen that during the year under consideration, assessee has taken unsecured loans amounting to Rs. 4,96,36,010/- on which assessee has paid interest of Rs. 31,98,292/-

Further, on verification of Balance Sheet as on 31.03.2018, it is seen that assessee has shown secured loan from Tata Capital Hsg Fin. Ltd. amounting to Rs.1,79,98,713/- for which the date of loans taken is not available on record

### **ISSUE No 2**

On verification of Profit & Loss A/c., it is seen that assessee has debited an amount of Rs. 5,00,000/- towards TDR Expenses. As TDR Expenses are in the nature of capital expenditure, the assessee is not entitled to claim it as revenue expenditure.

Therefore, you are being allowed an opportunity of being heard and show-cause as to why an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment within the meaning of section 263 of the Income Tax Act, may not be passed in your case.”

4. Vide notice issued u/s 263 of the Act the ld. Pr. CIT has pointed out that the assessing officer in the assessment order has not mentioned that whether the assessee was following percentage completion method or project completion method for recognising the

revenue. The Id. Pr.CIT on verification of the profit and loss account noticed that assessee has debited an amount of Rs.190,10,995/- as interest cost during the year under consideration. The Id. PCIT was of the view that assessee was following project completion method therefore claim of interest on loan taken during the year was not allowable in the year under consideration. The Id. Pr.CIT noticed that during the year the assessee has taken unsecured loan amounting to Rs.496,36,010/- on which the assessee has paid interest of Rs.31,98,292/-. The Id. Pr.CIT further stated that assessee has also shown secured loan from Tata Capital Housing Finance Ltd. amounting to Rs.179,98,713/- for which the date of loan taken was not available on record and interest component need to be examined.

4. The Pr.CIT has also seen that assessee has debited amount of Rs.5,00,000 towards TDR expenses and stated that these expenses were in the nature of capital expenditure, therefore, assessee was not entitled to claim the same as revenue expenditure.

5. The Pr.CIT stated that that while making assessment u/s 143(3) dated 02.03.2021 for the A.Y. 2018-19 the AO had failed to examine the above facts of the case in respect of method of revenue recognition interest on loan and nature of expenses as capital in nature therefore held that order passed u/s 143(3) of the Act on 02.03.2021 was erroneous insofar as it was prejudicial to the interest of revenue.

6. On merit, the Id. Counsel submitted that the assessing officer has completed the assessment after examination and verification of the relevant issue at the time of original assessment made u/s 143(3) of the Act on 02.03.2021. The Id. Counsel filed a paper book comprising detail of information asked by the assessing officer and submitted by the assessee during the course of assessment proceeding. The Id. Counsel also referred copies of notices issued by the assessing officer u/s 142(1)

of the Act on 19.02.2020 and 09.11.2020. He referred serial no. 5 of the Annexure to notice u/s 142(1) dated 19.02.2020 wherein as per serial no. 5 the assessing officer asked the following detail:

*“5. Kindly furnish details of 'Loans taken/received and interest expenses paid/credited as per Performa given below, in respect of New loans and Old loans during the year. (In case of no such transactions carried out by you, you may skip the reply to this question)*

Sr. No.	Name of loan Creditor with PAN number	Amount b/f as on 01.04.2017	Amount of Loantaken during the year	Total interest	TDS made if any	Repayment of loan during year	Balance c/f 31.03.2018
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*Also furnish the following*

- 1. The identity details of the loan creditor*
- 2. The copy of duly signed 'Loan confirmations' from the loan creditors*
- 3. The copy of the income tax return and/or balance sheet of loan creditors,*
- 4. The bank statement of the loan creditor showing the transactions.*

*Please note that the primary onus to substantiate the identity, genuineness and creditworthiness of the loan creditors' and genuineness of such loan transactions' lies upon you.*

*For each loan taken from any financial institution, kindly provide loan sanction letter.”*

He also referred serial no. 11, 12, 13 and 18 of the questionnaire wherein the AO has asked the following detail:

*“11. Kindly furnish the details of major heads of expenditure debited to the Trading and Profit & Loss a/c and details of TDS made on such expenses, if applicable. Also kindly furnish details of ledgers and all major bills regarding the above.*

*12. Please provide project wise party wise details of Sales made along with the (i) details of property i.e. Bungalow/flat/shop no., (ii) area of property, (iii) date of sale and/or agreement of sale, (iv) the name(s), PAN & complete postal address of the party, (v) total amount of transaction value, (vi) amount received, (vii) amount receivable, to whom, sales (and/or agreement of sales) of units/flats/shops were made during the year ended on 31.03.2018.*

*Also kindly provide copy of Sale/Agreement deed and supporting vouchers/ledgers of sales account/ evidences etc. substantiating your claim.*

*In case of no such transactions carried out by you, you may skip the reply to this question.*

13. *Kindly furnish the proper & complete details [Project wise] of (i) Opening Stock, (ii) Closing Stock, and (iii) Work in progress, if any. (In case of no such transactions carried out by you, you may skip the reply to this question)*

18. *You are running real estate business and disclosing closing stock as well. In regard kindly provide following details:-*

1. *Kindly explain and furnish the complete computation of Income/Profits [Project wise, for each complete and ongoing project] from real estate business, along with all necessary details & supporting evidences, to substantiate such computation of Income/Profits.*
2. *Also explain the methodology adopted by you for booking of profit and apportionment of expenditures in the light of various accounting standards in this regard, such as AS-7.*
3. *Further, kindly explain along with necessary evidences whether provisions of deemed rent are applicable in any of the real estate projects mentioned above.”*

7. The Id. Counsel further referred the detail of submission made by the assessee in response to notices issued by the assessing officer during the course of assessment proceedings. He also referred page no. 123 of the paper book pertaining to the submission of the assessee made during the course of assessment proceeding on 06.02.2021 in respect of complete detail of completed projects along with allocation of cost etc.

On the other hand, the Id. D.R has supported the order passed by the Id. PCIT u/s 263 of the Act.

- “i. In the course of hearing, the undersigned had made detailed arguments, inter alia, on Ground No. 3. The contention of the Assessee is that PCIT, 27, Mumbai, (Respondent) had no jurisdiction to invoke revisionary powers u/s 263 of the Act. as the assessment order has been passed by NFAC.*
- ii. The Ld. DR objected to the said contention and sought time to file a written submission. The Hon'ble Bench directed the Ld. DR to reply by 06.12.2023 and simultaneously granted time to the undersigned to file a submission by 08.12.2023.*

- iii. *Therefore, the present submission.*
- iv. *Further, the present submission is restricted to the said Ground No. 3 only. though the undersigned had argued even on the other grounds of appeal*

## **2. Ground No 3**

*“The Ld. PCIT had no jurisdiction to pass order u/s 263 of the Act dated 30.03, 2023.”*

- 3. ***To support the above ground, there are four separate arguments brought out hereunder:***

***A. Since, NEAC/ NFAC (referred to as NEAC) has jurisdiction to pass assessment order and since, NEAC has, in fact, passed order, therefore, the same cannot be revised by the Respondent.***

- a. *Jurisdiction to pass order and that the order is, in fact, passed by NEAC*
  - i. ***Notification No. 61/2019 dated 12.09.2019*** issued u/s 143(3A) of the Act - Para 4(i) -NEAC shall be vested with the jurisdiction to make assessment.
  - ii. ***Notification No. 60/2020 dated 12.09.2019*** issued u/s 143(3A) of the Act para 5(xvi) - NEAC shall examine the order by way of automated examination tool and then finalise the assessment. Even other clauses (viz., (xviii), (xix), (xxi), (xxii) and (xxv)) point out that the power to finalise and pass the assessment order is with NEAC. Same is accepted by the Ld. DR in para 2.1.1 of the written submission.
  - iii. *Impugned order dated 02 03 2021, is passed by NEAC, and signed by one of the Officers of NEAC*
- b. *NEAC is a unit or a body or a centre and not an income tax authority.*
- c. *NEAC comprises of a team of people, including PCCIT, CIT, Addl/Jt. CIT and DCIT/ACIT (See Officer order dated 13.08.2020).*
- d. *Since, the order is passed by a team/unit/ centre as a whole consisting of officers either senior to PCIT, Mumbai or similarly positioned officers, such order cannot be revised by PCIT, Mumbai u/s 263 of the Act. [See (1996) 57 ITD 328 (Bom) Trustees of Parsi Panchayat Funds & Properties vs. DIT(enclosed)]*
- e. *At the time of hearing, a doubt was raised by the Hon'ble Bench then in such case, appeal cannot be filed before CIT(A). In this regard, it is humbly submitted that the scheme specifies that the appeal has to be filed to CIT(A) [See para 7 of the Notification No. 61/2019 dated 12.09.2019]. Therefore, there is no other option but to file an appeal before CIT(A).*

*Without prejudice to the above, if a view is taken that order is passed by Faceless Assessment Unit i.e., DCIT/ ITO (colloquially referred to as "FAO") then, the following is submitted:*

*B. Powers u/s 263 are supervisory/ revisionary powers which can be exercised over the officer who is within the administrative control of the revisionary authority.*

- a. Jurisdiction to revise is derived u/s 263 of the Act. The scope of provisions of section 263 of the Act is no longer res integra. The power of suo motu revision in terms of section 263(1) is in the nature of supervisory jurisdiction. [See 203 ITR 108 (Bom) CIT vs. Gabriel India Ltd.; 314 ITR 81(SC) CIT vs. Greenworld Corporation).*
- b. Such supervisory powers can be exercised only on the subordinates to such officer i.e., over whom the Commissioner exercises jurisdiction and cannot be exercised on someone who is not a subordinate. A reference can be made to similar provisions under Civil Procedure Code, wherein it is settled that revisionary powers can be exercised only over the subordinate courts and cannot be exercised over a Court which is not subordinate*
- c. Power u/s 263 is not based on territorial jurisdiction but is based on the jurisdiction which a PCIT/ CIT exercises over his/her subordinate. There is no notification to the effect that power u/s 263 has to be exercised by the territorial PCIT*
- d. Reliance in this regard, is placed on the following decisions*
  - i. 152 TTJ (Mumbai) 265 Essar Steel Ltd. vs. Addl. CIT*

*"18. Before parting, we would like to observe that there seems to be no clarity about the authority who has to modify the TPO's order in case, any order of TPO is prejudicial to the interests of Revenue CIT cannot exercise jurisdiction over TPO as TPO functions separately under the Director of IT(TP). In our view the Director of IT should have initiated the proceedings under s. 263 on the order of the TPO instead of sending proposal to the CIT for revising the order of the TPO."*
  - ii. ITA(TP) no. 3121 and 3122/Mum./2013 Tata Communications Limited vs. DCIT dated 20.12.2013- (See para 9 and 10)*
- e. It is very important to note that the above view has been incorporated in the Legislature itself vide amendment to section 263 carried out by Finance Act 2022 and power has been given to DIT(TP) to revise order of TPO. Thus, the Legislature has accepted that only Commissioner of the same jurisdiction can exercise revisionary power over the orders passed by an Officer subordinate in his jurisdiction. This has been brought out in the Circular No. 23/2022 (dated 03.11.2022) which brings out the explanatory notes to F.A. 2022. Para 43 deals with this issue. And para 43.3 is brought out hereunder:*



*“Therefore, the provisions of section 263 of the Act have been amended so as to provide that the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner who is assigned the jurisdiction of transfer pricing may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the TPO, working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO.”*

- f. This is also accepted by the Ld. DR in para 2.2.2 of her written submission, that CIT can exercise powers u/s 263 over the orders of his subordinates.*
- g. Now, FAO is not subordinate to PCIT-27, Mumbai. Please see clause (c), (d) and (e) of Notification No. S.O. 359(E) dated 30.03.1998 as modified from time to time which is issued u/s 118 of the Act. As per the said Circular, "Assistant Directors or Assistant Commissioners shall be subordinate to Additional Directors or Additional Commissioners or Deputy Directors or Deputy Commissioners within whose jurisdiction they perform their functions or other income-tax authority under whom they are appointed to work and to any other income-tax authority to whom the Deputy Director or the Deputy Commissioner, as the case may be, or other income-tax authority, is subordinate*
- h. FAO is subordinate to PCIT of Assessment Unit. Each Assessment Unit has a Principal Commissioner of Income-tax to whom the FAO i.e., ITO, ACIT, DCIT or AddI/JCIT are subordinate. Please see Notification S.O. 2692 (E) [NO. 60/2022/F.NO. 187/3/2020-ITA-I] dated 06.06.2022.*
- i. Thus, clearly, FAO is not subordinate to PCIT-27, Mumbai and therefore, PCIT, Mumbai could not have exercised his supervisory powers u/s 263 of the Act over the order passed by FAO.*

*C. Concurrent jurisdiction and therefore, power can be exercised by respective PCIT/CIT*

- a. This is another fact of the argument no. 3B earlier.*
- b. As per Notification No. 2756 (E) dated 13.08.2020, and as per Notification No. 1435(E) dated 31.03.2021, NEAC and FAO have concurrent jurisdiction over assessee. This has been accepted in para 2.1.3 of the written submission of the Ld. DR.*
- c. Such notification is issued, inter alia, u/s 120(5) of the Act.*
- d. It is submitted that, dictionary meaning of the term "concurrently" is "at the same time". Thus, Concurrent jurisdiction means, both the Jurisdictional AO ('JAO') and FAO have concurrent jurisdiction to assess an assessee. However, assessment is to be done by only one to the exclusion of the other i.e., only one can exercise power to assess and pass an order to the exclusion of other and both cannot do it simultaneously. This has been recognised under the Act and the faceless scheme and the instructions issued thereunder. This fact is undisputed.*

e. Thus, there are two Assessing Officers, exercising concurrent power i.e, JAO and FAO, but one to the exclusion of the other.

f. It is an undisputed fact, that both the officers have a superior officer in the rank of CIT/PCIT in their respective jurisdictions.

g. In such a scenario, if order is passed by "A" officer, then the same can be revised by CIT/ PCIT who has jurisdiction over such Officer and if order is passed by "B" Officer, then then the same can be revised by CIT/ PCIT who has jurisdiction over such Officer. Thus, superior of "A" Officer cannot revise the order of "B" Officer and vice versa, because he is not subordinate to PCIT/ CIT of "A" jurisdiction and vice versa.

h. To support this, an analogy can be drawn from the fact that even the approvals for specified acts, while conducting assessment like approval before conducting special audit u/s 142(2A) etc. are taken of the respective commissioners and not by PCIT, Mumbai (See SOPs dated 23.11.2020). Thus, for such an approval, the FAO would not come to Jurisdictional PCIT, as he is reportable to his PCIT. If PCIT(Assessment Unit) (hereinafter PCIT(AU)) is required to exercise all the functions under the Act, then in such case, even the powers u/s 263 are to be exercised by him.

i. A similar instance can be seen that an order passed by TDS circle cannot be revised by jurisdictional PCIT but by PCIT(TDS)

j. Thus, in light of concurrent jurisdiction, the exercise of jurisdiction u/s 263 of the Act by PCIT, Mumbai over the order passed by FAO is bad in law.

D. Assessment Order is passed with concurrence/ approval of Addl. CIT/ Jt. CIT and PCIT at various stages. Such order cannot be revised by PCIT, Mumbai.

a NEAC/NFAC had issued SOP dated 23.11.2020.

b. From the SOPs, it can be deduced that at various stages, approval is taken of JCIT or PCIT of the same unit, before making the assessment.

c. For instance, refer Para B1, D3, E2, G3, H3, J2, L and W2.

d. In fact, the Board has prescribed that each and every order passed under NFAC has to be approved by Range Head i.e., JCIT/ Addl. CIT. As a result, the appeals under the faceless regime are not heard by JCIT(A) but by CIT(A).

e. Where approvals are taken of JCIT, then in such case, the order cannot be revised by PCIT, unless specifically so provided for in section 263 or explanations thereto, (See 132 taxmann.com 231 (Del) Abha Bansal vs. PCIT).

f. In any case, when approvals of PCIT are taken at various stages of assessment, such an order, cannot be revised by his contemporary at the same level. This is a settled law. [See (1996) 57 ITD 328 (Bom) Trustees of Parsi Panchayat Funds & Properties vs. DIT]

g. Once order is passed with approval of PCIT, invocation of section 263 will not amount to a revision but would be a review, which is not what section 263 permits.

h. Thus, by this logic, as well, the impugned order is without jurisdiction.

#### **4. Rebuttal of the contentions of the Ld. DR**

##### **1. Para 2.1 to 2.1.8**

a. The Ld. DR has, has contended as under

a. that the power of Jurisdictional PCIT does not in any manner get affected by Faceless Regime as he has territorial jurisdiction; JAO and Jurisdictional PCIT have perpetual jurisdiction over a case;

b. In para 2.1.3 and 2.1.4, it is stated that as per the Notification stated therein the jurisdiction of FAO is concurrent;

c. After completion of the assessment, the records are transferred to the JAO;

d. Concurrent jurisdiction ends with the completion of assessment,

e. That, as per the scheme, a case can at any moment be transferred to the JAO for completion of assessment.

f. That the Hon'ble Calcutta High Court and Office Memorandum dated 06.02.2023, has held that the JAO has concurrent jurisdiction and that he can issue notice u/s 148 of the Act.

**b. Rebuttal** In this regard, the following is submitted:

i. Insofar as the first contention is concerned that the power of PCIT does not in any manner get affect is concerned, it is submitted that the same is not even disputed by the Assessee. JAO and Jurisdictional PCIT have jurisdiction over the Assessee. However, powers u/s 263 are peculiar to a superior Officer whose subordinate has passed the order. Jurisdictional PCIT can exercise power u/s 263 of the Act, only over the orders passed by an AO under his jurisdiction.

ii. The second contention of the Ld. DR of concurrent jurisdiction, in fact supports the contention of the assessee as elaborated in para 3C earlier. Furthermore, it is important to note that such concurrent jurisdiction does not end with the passing of the assessment order. The Notifications relied upon by the Assessee and by the Ld. DR, both state that the NFAC shall at all times have concurrent jurisdiction. Once, that is the case, then, it is submitted that the power u/s 263 has to be exercised by the PCIT having jurisdiction over the Officer who passes the order. In any case, as contended earlier, revision u/s 263 is not based on territorial jurisdiction but based on jurisdiction over one's subordinate

iii. The third contention of the Ld. DR is that the records are transferred on completion of assessment and the fourth contention is that the concurrent jurisdiction ends with the passing of the assessment order. In this regard the following is submitted

1. Firstly, this, in my submission, does not in any manner dilute the fundamental principle that an order of subordinate can be revised by his supervisor. Revisionary powers can be

*exercised only in accordance with section 263 of the Act as explained earlier.*

- 2. Secondly, the transfer of record is for the limited purpose of considering rectification application u/s 154 of the Act and for stay applications u/s 220(6) of the Act. The meaning of "transfer of record" is for doing some limited function by the JAO.*
- 3. Thirdly, it is very pertinent to note that set aside proceeding, consequent to an order u/s 263 of the Act, has to be completed by a FAO [See Order F. No. 187/3/2020-ITA-1, dated 31-3-2021]. Thus, the records are retransferred to the FAO. Thus, original assessment is by FAO and set aside assessment is by FAO. Then in such case, the order passed in the interregnum u/s 263 of the Act, cannot be by the Jurisdictional PCIT.*
- 4. Even the reassessment proceeding is done by FAO. In fact, notice u/s 148 has to be issued by FAO (See Hon'ble Telangana High Court judgment in [2023] 156 taxmann.com 178 (Tel) Kankanala Ravindra Reddy vs. ITO (enclosed)). In fact, even the assessment proceeding for the other years are to be completed by FAO and not JAO and therefore, it cannot be stated that concurrent jurisdiction has ended on completion of assessment*
- 5. Further, transfer of record, does not mean that the order shall be deemed to be passed by the JAO and not FAO. Moreover, mere transfer of record would not mean transfer of jurisdiction u/s 263 of the Act to an Officer who had no jurisdiction. The notification u/s 143(3A) or 143(3B) of the Act, does not in any manner determine the jurisdiction u/s 263 of the Act.*
- 6. In any case, what is transferred is only the 'electronic record' and not the complete record*
- 7. Fourthly, as held by the Hon'ble Mumbai ITAT, in such case, it would be apt for the Jurisdictional PCIT to refer the matter to the Faceless PCIT. He can very well transfer the electronic records to the PCIT (AU), to exercise jurisdiction u/s 263 of the Act, because the order has been passed by his subordinate.*
- 8. Records are in any case electronic and available to all. In fact, "records" u/s 263 is widely defined to mean any record upto the date of passing of order by PCIT including records in case of other parties (See [1998] 231 ITR 53 (SC) CIT vs. Shree Manjunathesware Packing Products & Camphor Works(enclosed). Thus, the PCIT(AU) having jurisdiction over the FAO, can call for all records and pass an order u/s 263 of the Act.*

9. Also, the present situation is on a much better footing that the situation arising in Transfer Pricing orders as dealt with by the Mumbai ITAT (supra). In case of TPO, jurisdictional AO has to pass order after taking into account the order of TPO. Thus, the order to be revised is of the subordinate of Local PCIT. Whereas in the present case, order to be revised is passed by a completely different officer who is not even subordinate to the Jurisdictional PCIT. Thus, the said judgments would apply with much force in the present case especially, when the same has been introduced in the Legislature and accepted by Board Circular.
10. It is thus submitted that transfer of record, will not in any manner affect the supervisory and revisionary powers to be exercised by an authority u/s 263 of the Act over the orders of officers within his jurisdiction.

iv. The next contention of the Ld. DR is that as per the scheme, the case can at any moment be transferred to the JAO for completion of assessment. This, in fact, bolsters the case of the assessee. This proves that there are two officers exercising concurrent jurisdiction to the exclusion of the other i.e., at one point of time only one officer can complete the assessment. If that be the case, the respective PCIT/CIT having jurisdiction over the officer passing the order can exercise the power u/s 263 of the Act.

v. Reliance has been placed on the Boards reply in a writ petition and the judgment of the Hon'ble Calcutta High Court. In this regard, the following is submitted

1. Firstly, the same are not in the context of section 263 of the Act, but section 148 of the Act. Therefore, the same is not relevant at all,
2. Secondly, in identical context, Division Bench of the Hon'ble Telangana High Court has taken a favourable view that even notice u/s 148 of the Act has to be issued by FAO. Such a detailed order, has not been considered by the Single Judge of the Hon'ble Calcutta High Court, which has dismissed the writ petition in a one para order.
3. Thirdly, in any case, the Hon'ble Calcutta High Court has held that both the authorities exercise concurrent jurisdiction. That supports the case of the Assessee, inasmuch as, the Commissioner of the concerned AO who has passed order, should exercise power u/s 263 of the Act.

## **ii. Para 2.2 to 2.2.5**

a. The Ld. DR has contended the following

- i. That the power u/s 263 is a supervisory power to correct the erroneous orders of his subordinates.

ii. In para 2.2.3 the Ld. DR has reiterated about transfer of records

**b. Rebuttal:** In the above regard, it is submitted that:

- i. in para 2.2.2, it has been contended that the PCIT can revised the order of his subordinate office. Since, the order is not of his subordinate office, therefore, the PCIT, Mumbai had no power to revise u/s 263 of the Act.
- ii. The transfer of record argument is a repetition and has been dealt with earlier.

**iii. Para 2.3 to 2.3.4**

a. In par 2.3 till 2.3.4, the following has been contended.

- i. In para 2.3.1 it has been mentioned that concurrent jurisdiction of PCIT(AU) is restricted to faceless assessment proceeding and not extended to section 263 of the Act.
- ii. In para 2.3.2. it has been mentioned there is no separate notification for granting power to PCIT(AU)
- iii. There is a floating nature of the Faceless assessment units.

**b. Rebuttal:** In the above regard, the following is submitted:

- i. There is no jurisdiction conferred on any PCIT over any assessee. PCIT derives jurisdiction to revise an assessment u/s 263 of the Act. Since, section 263 is very clear and duly interpreted in the manner that PCIT having jurisdiction over an officer can only revise the order, therefore, power u/s 263 can be exercised only by such PCIT. ii. There is no need for separate notification for conferring power on PCIT(AU).
  - ii. This is because section 263 is very clear that power is conferred only on the officer whose subordinate has passed the order. Unless there is a separate notification or amendment in the Legislature, allowing the Jurisdictional PCIT to revise the order of FAO, the same cannot be done.
  - iii. Floating nature of the assessment unit does not change the factual position It is the superior in the jurisdiction of the officer who has passed the order, who can exercise powers u/s 263 of the Act. In any case, it is undisputed that PCIT, Mumbai was not superior to or exercised jurisdiction over any of the Faceless officers. Thus, he had no jurisdiction to pass the order.
5. The above contentions of the assessee do not in any manner make the provisions of section 263 otiose or unworkable The PCIT having jurisdiction of FAO, can exercise powers u/s 263 of the Act.
6. Since, the basic principle of law, as brought out earlier that revisionary jurisdiction is derived u/s 263 of the Act and such power u/s 263 is a supervisory power, is not disputed. It is, also, not disputed that such power can be exercised only over the subordinates within the jurisdiction of the PCIT. Rather the same has been specifically admitted. It is a settled law that when power is given under the statute to do a certain thing in a certain

way, it must be done in that way or not at all. **[See 346 ITR 443 (Bom) Ghanshyam K. Khabrani vs. ACIT (enclosed) and several other]**

*In light of the above, it is humbly submitted that the impugned order u/s 263 of the Act is bad in law, without jurisdiction and bad in law and therefore, should be quashed and set aside.”*

8. During the course of appellate proceedings before us the Id. Counsel contended that 263 order passed by the Id. Pr.CIT on 30.03.2023 is bad in law and the Pr.CIT has no jurisdiction to pass the order as the assessment in this case was made by the assessing officer under the E-assessment Scheme which was under the supervision of the another Pr.CIT. The Id. Counsel referred the CBDT Notification dated 12.03.2019. He referred para 4 of the notification as under:

- “4. *E-assessment Centres (1) For the purposes of this Scheme the Board may set up-*
- (i) National assessment Centre to facilitate the conduct of e assessment proceedings in a centralised manner. which shall be vested with the jurisdiction to make assessment in accordance with the provisions of thus Scheme.*
  - (ii) assessment units, at it may deem necessary to facilitate the conduct of e-assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified. analysis of the material furnished by the assessee on any other person, and such other functions as may be required for the purposes of making assessment.”*

He also referred para (3) of the CBDT notification dated 12.09.2019 which is reproduced as under:

- “(3) *The units referred to in sub-paragraphs (i), (iv), (v) and (vi) of paragraph (1) shall have the following authorities, namely-*
- (a) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be.*
  - (b) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be,*
  - (c) such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.”*

He also referred CBDT Notification dated 30.08.2020 which is reproduced as under:

- “(iv) the National e-assessment Centre shall assign the case selected for the purposes of e-assessment under this Scheme to a specific assessment unit in any one Regional c-assessment Centre through an automated allocation system.*
- (v) where a case is assigned to the assessment unit, it may make a request to the National e-assessment Centre for*
  - (a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify*
  - (b) conducting of certain enquiry or verification by verification unit; and*
  - (c) seeking technical assistance from the technical unit”*

He also referred para (xvi) of the CBDT notification dated 13.08.2020 which is reproduced as under:

- “(xvi) the National e-assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, Whereupon it may decide to:-*
  - (a) finalise the assessment as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment, or*
  - (b) provide an opportunity to the assessee, in case a modification is proposed, by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order, or*
  - (c) assign the draft assessment order to a review unit in any one Regional e-assessment Centre, through an automated allocation system, for conducting review of such order.”*

9. He also referred CBDT Notification dated 14.06.2023. The ld. Counsel also referred the case of Essar Steel Ltd. Vs. Addl. CIT of ITAT, Mumbai vide ITA No. 4007/Mum/2010 dated 31.10.2012 wherein held that in the case of any order of TPO is prejudicial to the interest of revenue, CIT cannot exercise jurisdiction over TPO as TPO functions



separately under the Director of IT (TP). He also referred the case of ITAT, Mumbai of Tata Communication Ltd. Vs. Pr.CIT vide ITA No. 3122/Mum/2013 dated 20.12.2013 based on the decision of the ITAT in the case of Essar Steel Ltd. holding that Commissioner has no jurisdiction over the TPO administratively and he could not have revised the order passed u/s 92CA(3) passed by the TPO. The Id. Counsel submitted that supervisory power over the assessing officer cannot be exercised by the non-faceless Pr.CIT in case assessment is made by the faceless assessing officer and if the assessment order was passed with the approval of various authorities then initiating of proceeding u/s 263 of the Act by the Pr.CIT having physical jurisdiction is not correct.

On the other hand, the Id. D.R submitted that there is no role of Pr.CIT in giving guidance to the assessing officer for passing the assessment order under the faceless scheme. The Id. D.R also referred the notification of the Board of CBDT dated 13.08.2023 particularly clause (xxvi) wherein it is stated that the National E-assessment Centre shall after completion of assessment, transfer the electronic records of the case to the assessing officer having jurisdiction over the said case for such action as may be required under this act. She submitted that after completion of assessment the case record go back to the assessing officer having physical jurisdiction over the cases for all the subsequent action including u/s 263 of the Act. She further submitted that the case law referred by the Id. Counsel are distinguishable from the facts of the case of the assessee. She further submitted that after completion of faceless assessment the assessment over the cases switch over to the regular Pr.CIT for all the remaining action.

10. On merit, she has submitted that assessing officer has not verified the method of completion projects followed by the assessee and allocation of the interest cost. She has supported the order of Pr.CIT.

11. Heard both the side and perused the material on record. Regarding ground no. 3 of the assessee that Pr.CIT-27 has no jurisdiction to invoke revisionary power u/s 263 of the Act as the assessment order has been passed by NFAC, the Id. Counsel was of the view that since the assessment order under faceless scheme is passed by a team/unit/centre and such order cannot be revised by Pr.CIT, Mumbai u/s 263 of the Act. The Id. Counsel submitted that power u/s 263 is not based on territorial jurisdiction but is based on the jurisdiction which a PCIT/CIT exercise over his subordinate. He also referred the Board Notification as referred above in this order pertaining to the scheme on e-assessment. He was of the view that assessment order is passed with concurrent/approval of additional CIT/JCIT and PCIT at various stages therefore such order cannot be revised by PCIT, Mumbai having territorial jurisdiction physically over the case. We have perused the provision of e-assessment scheme 2019. The said scheme was notified by the CBDT vide notification dated 12.09.2019 which was later renamed as faceless assessment scheme 2019 FAS vide the CBDT notification date 13.08.2020 reproduced as under:

- “1. *Ground no 3 filed by the assessee in the above-stated appeal is as under:  
"The Ld. PCIT had no jurisdiction to pass order us 263 of the Act dated 30-03-2023."*
- 1.1 *During the hearing held on 29-11-2023, the learned counsel for the assessee challenged the jurisdiction of the PCIT, Mumbai-27 to pass order u/s 263 of the IT Act, 1961 in the above-mentioned case for AY 2018-19 on the ground that the assessment order revised by the PCIT was passed u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act under the Faceless Assessment Scheme. He also argued that the order u/s 263 of the Act ought to have been passed by the PCIT (Assessment Unit).*
2. *The aforesaid ground of appeal is not tenable in view of the following submissions put forth in the ensuing paragraphs.*
- 2.1 *It is vehemently argued that the PCIT, Mumbai-27 had territorial jurisdiction over the case and has correctly exercised the power to invoke provisions of section 263 of the Act.*
- 2.1.1 *The territorial jurisdiction of the PCIT, Mumbai-27 over the above-mentioned case is absolute irrespective of the fact that the assessment order has been passed under the Faceless Assessment Scheme. In this context, it is necessary to examine the relevant provisions of the E-assessment Scheme, 2019. The said Scheme was notified vide the CBDT Notification dated 12th September, 2019 for the purpose of making*

assessment of total income or loss of the assessee under section 143(3) of the Act. It was later renamed as the Faceless Assessment Scheme, 2019(FAS) vide the CBDT Notification dated 13th August, 2020. Later, section 144B was inserted in the IT Act with effect from 1st April, 2021 to provide the manner in which faceless assessment shall be conducted within the Income-Tax Act itself. As per clause (iv) to sub-section (1) of section 144B of the Act, the National e-assessment Centre shall assign the case selected for the purpose of e-assessment under the Scheme to a specific assessment unit in any one Regional e-assessment Centre through an automated allocation system. Following the detailed procedure for assessment laid down in the clauses (v) to (xxxi) to sub-section (1) of section 144B of the Act, the assessment unit shall make a draft assessment order and send it to the National e-assessment Centre for finalising the assessment. As per clause (xxxii) to sub-section (1) of section 144B of the Act, the National e-assessment Centre shall, after completion of the assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

- 2.1.2 It is pertinent to mention here that even before the completion of the assessment, the National e-assessment Centre may transfer the case back to the Assessing Officer having jurisdiction over such case with prior approval of the CBDT (refer to sub-section (8) to section 144B of the Act). Further, during the course of assessment proceedings, the National e-assessment Centre may assign the case to an assessment unit, other than the assessment unit which has drafted the assessment order, to implement the suggestions for modification received from the review unit (refer to clause (xix) to sub-section (1) of section 144B of the Act).
- 2.1.3 Further, vide CBDT notification dated 31st March, 2021 all the Income-tax Authorities of Regional Faceless Assessment Centres such as the concerned CCIT, PCIT, Addi/JCITs, DCITs/ACITs and ITOs shall exercise the powers and functions of Assessing Officers concurrently to facilitate the conduct of Faceless Assessment proceedings under section 144B of the Act. The relevant pages of the said notification are enclosed for ready reference.
- 2.1.4 Furthermore, the Office Memorandum dated 6th February, 2023 being F. No.370153/03/2023-TPL issued by the CBDT throws light on the issue of concurrent jurisdiction of the Faceless Assessment Units and the original jurisdiction of the Jurisdictional Assessing Officer (JAO) in Para 4 in the following manner: "4. It is also pertinent to note here that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. This is further corroborated by the fact that under section 144B of the Act the records in a case are transferred back to the JAO as soon as the assessment proceedings are completed. So, section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year. This cannot be construed to be meaning that the JAO is bereft of the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of section 144B of the Act. Since, section 144B of the Act does not provide for issuance of notice under section 148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice under section 148 of the Act." The said OM is enclosed for ready reference.

- 2.1.5 *The aforesaid OM has been relied upon by the Hon'ble High Court of Calcutta while disposing of writ petition WPO/ 1549/2023 in the case of Sanghi Steel Udyog Private Ltd Vs Union of India and Ors in its order dated 13th September, 2023 [TS-5831-HC-2023(CALCUTTA)-O]. The Hon'ble Court has dismissed the writ petition filed by the petitioner challenging the issue of notice u/s 148 of the Act by the jurisdictional Assessing Officer and not by the National Faceless Assessment Centre as required by section 151A of the Act. The Hon'ble Court has upheld that the jurisdictional Assessing Officer retains the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of section 144B of the Act. The said judgment is enclosed for ready reference.*
- 2.1.6 *In the light of the above facts, it is crystal clear that the jurisdiction over a case/a particular assessee perpetually remains with the jurisdictional Assessing Officer. When the case is specifically assigned to an assessment unit under the FAS, it exercises concurrent jurisdiction till the completion of the assessment. Moreover, the case is also likely to be transferred to another assessment unit to complete the on-going assessment on receipt of suggestions from review unit. Thus, the scope of the Faceless Assessment Scheme is limited to the making of the assessment in the selected case, after which the electronic records pertaining to the assessment are transferred back to the jurisdictional Assessing Officer for other actions required under the Act. Under certain circumstances, with prior approval of the CBDT, the case may be transferred back to the jurisdictional Assessing Officer even before the completion of the assessment. Thus, section 144B provides for fluidity in the jurisdiction over the case/ assessee during the assessment proceedings. However, the fixed jurisdiction always lies with the jurisdictional Assessing Officer, who never ceases to have jurisdiction over the case.*
- 2.1.7 *In the present case, the above-mentioned assessee was assessed within the jurisdiction of the DCIT, 27(3), Mumbai. The assessment for AY 2018-19 was transferred to Regional E-assessment Centre assessment unit on 13-10-2020. After completion of the assessment on 22-03-2021, its electronic records were transferred back to the DCIT, 27(3), Mumbai for other actions required under the Act. Subsequently, proceedings u/s 263 of the Act were initiated by the PCIT, Mumbai-27 by issuing hearing notice on 01-03-2023. Thus, the DCIT, 27(3), Mumbai and consequently, the PCIT, Mumbai-27 never ceased to have jurisdiction over the case. The assessment unit exercised concurrent jurisdiction for a limited duration and for the specific purpose of making the assessment and after the completion of the assessment, its concurrent jurisdiction ended.*
- 2.1.8 *In view of the above-stated facts, it is re-iterated the PCIT, Mumbai-27 had complete jurisdiction for the exercise of the power to invoke provisions of section 263 of the Act in this case.*
- 2.2 *It is strongly contended that the PCIT, Mumbai-27 has correctly exercised the revisionary jurisdiction and supervisory jurisdiction conferred upon by section 263 of the Act.*
- 2.2.1 *Section 263 of the Act gives revisionary jurisdiction to the PCIT for revision of orders prejudicial to revenue. In order to exercise the revisionary jurisdiction, the PCIT is empowered to call for and examine the record of any proceeding under the Act. If he considers that any order passed by the Assessing Officer is erroneous as well as prejudicial to the interests of the revenue, he may, after giving opportunity to the assessee,*

*pass an order enhancing or modifying or cancelling the said assessment by directing the A.O to make a fresh assessment.*

*2.2.2 The statutory power u/s 263 of the Act is also in the nature of supervisory jurisdiction to correct the orders prejudicial to the interest of revenue. The supervisory jurisdiction gives the right to the superior authority to suo motu call for and to examine the record of any proceeding maintained by the subordinate office. It also empowers the superior authority to give directions to the subordinate office which are binding in nature.*

*2.2.3 It has been explained above that as per the existing scheme, the concurrent jurisdiction of the assessment unit ends after the completion of the assessment and the electronic records of the completed assessment are transferred back to the jurisdictional Assessing Officer. Since the assessment records are available with the jurisdictional Assessing Officer, hence the supervisory jurisdiction u/s 263 of the Act can only be exercised by the jurisdictional PCIT to call for and to examine the records of the proceedings. The jurisdictional PCIT may then issue hearing notice to give opportunity to the assessee, if he considers the assessment order to be erroneous and also prejudicial to the interest of the revenue. The jurisdictional PCIT further passes an order setting aside the assessment and directing the jurisdictional Assessing Officer to make a fresh assessment.*

*2.2.4 Thus, since the electronic records were available with the DCIT, 27(3), Mumbai after completion of assessment, hence the PCIT, Mumbai-27 had the sole authority to call for and to examine the assessment record, to consider whether provisions of section 263 of the Act were liable to be invoked, to give opportunity to the assessee and to direct the DCIT, 27(3), Mumbai to make fresh assessment.*

*2.2.5 In the light of the above facts, it can be safely concluded that the assuming of jurisdiction u/s 263 of the Act by the PCIT, Mumbai-27 over the assessment order passed by the faceless assessment unit is totally valid and entirely as per the statute.*

*2.3 It is fervently maintained that the PCIT (Assessment Unit) is not the competent authority to exercise jurisdiction u/s 263 of the Act.*

*2.3.1 As noted above in sub-para 2.1.3, the CBDT notification dated 31 March, 2021 empowers all the Income-tax Authorities of Regional Faceless Assessment Centres, including the PCIT (Assessment Unit), to exercise the powers and functions of Assessing Officers concurrently to facilitate the conduct of Faceless Assessment proceedings under section 144B of the Act. This undoubtedly clarifies that the concurrent jurisdiction of the PCIT (Assessment Unit) has been restricted to the conduct of Faceless assessment proceedings under section 144B of the Act and that it does not extend to the exercise of power u/s 263 of the Act.*

*2.3.2 Till date, no separate notification has been issued by the CBDT nor the provisions of the IT Act have been amended by the Legislature for granting the power to exercise jurisdiction u/s 263 of the Act to the PCIT*

*(Assessment Unit). Thus, under the existing scheme, there is no statutory power with the PCIT(Assessment Unit) to conduct the proceedings u/s 263 of the Act. Therefore, there is no ambiguity in the fact that the jurisdictional PCIT still has the jurisdiction to exercise power u/s 263 of the Act.*

*2.3.3 Besides the lack of statutory mandate, the PCIT (Assessment Unit) is also precluded from the exercise of power u/s 263 of the Act on account of the existing procedure for faceless assessment prescribed by section 144B of the Act. Owing to the floating nature of jurisdiction of the faceless assessment units over a case/ assessee, the case assigned to a faceless assessment unit may be transferred to another assessment unit or may even be transferred back to the jurisdictional Assessing Officer. Further, since the records are transferred back to the jurisdictional Assessing Officer on completion of the assessment, the PCIT (Assessment Unit) does not have the requisite supervisory jurisdiction to call for and to examine the assessment record. He can neither issue hearing notice to the assessee nor direct the jurisdictional Assessing Officer to make fresh assessment by setting aside the original assessment.*

*2.3.4 To sum up, the proposition that the order u/s 263 of the Act ought to have been passed by the PCIT (Assessment Unit) has no legs to stand on.*

*3. Relying on the submissions made above, it is humbly submitted that Hon'ble Bench may dismiss the ground of appeal challenging the jurisdiction of the PCIT to pass order u/s 263 of the Act.”*

12. In respects of grounds of appeal No. 1 to 2 and 4 filed by the assessee on merit of order passed u/s 263 of the Act, we have heard both the sides and perused the material on record. The Id. Pr.CIT observed that assessee was following project completion method for recognizing the revenue. Therefore, the Id. Pr.CIT was of the view that since assessee was following project completion method, therefore, the interest on loans taken during the year was not allowable in the year under consideration. However, on perusal of the record and hearing of both the side we find that during the course of assessment proceedings the assessee has filed copy of audited profit and loss account, balance sheet audit reports, ICDS notes and computation as placed on page no. 1 to 32 of the paper book filed during the course of appellate proceedings. On perusal of the profit and loss account it is noticed that assessee as shown sales of flats to the amount of Rs.15,53,20,580/- and in the profit and loss account also debited interest expenses of

Rs.1,90,10,995/-. It is also noticed in the profit and loss account assessee has shown closing stock of unsold finished flat to the amount of Rs.15,27,80,503/-. Further we have gone through the audit report filed by the assessee during the course of assessment proceedings in form 3CB and noticed that under the head significant accounting policies and disclosures as per ICDS on page no. 26 of the audit report assessee at Serial No. 2 under the head Revenue Recognition reported as under:

- a. *During the year, the Company has followed the Percentage Completion Method of accounting as per the Guidance Note on Revenue Recognition by the Real Estate Developers issued by The Institute of Chartered Accountants of India. Total Sale Consideration as per the agreements of sale of constructed properties is recognized as revenue based on the percentage of actual project cost incurred thereon, including the cost of land, estimated construction and development cost of the such properties, subject to actual construction cost incurred being 25% or more of the total cost of the construction of the project.*
- b. *The amount received from customers which does not qualify for revenue recognition under the Percentage Completion Method is accounted as Current Liabilities under the head Other Current Liabilities Sub Head Advance from Customers. The amount receivable against the percentage of revenue recognized is accounted for as Current Assets under the head Trade Receivables and the excess amount received from customer is accounted as current Liabilities under the head Advance from Customers.*
- c. *Interest on refund of any tax, duty or cess and dividend has been recognized on the receipt basis*
- d. *The Operating Revenue in respect of sale of goods is normally recognized at the point of dispatch to the customers. The operating revenue is net of Indirect Taxes and return, if any.*
- e. *Revenue in respect of time basis service income is recognized on prorata basis over period of contract. Revenue in respect of other services is recognized as and when the related service is completed or right to receive the same is established.*
- f. *Revenue in respect of Investment/other income except interest on refund and dividend is recognized as and when the right to receive the same is established.”*

13. It is clearly evident from the disclosure made in the Audit Report in respect of as per the accounting policies that assessee has followed

the percentage completion method of accounting as per the guidance note of Revenue Recognition by the Real Estate Developer issued by the Institute of Chartered Accountant of India. Further at serial no. 5 under the head significant Accounting Policies and Disclosure as per ICDS of the audit report that borrowing cost in respect to the acquisition and construction of assets are capitalised as part of the cost of respective asset up to the date when such assets get ready to intended use.

14. Further we have perused the notice u/s 142(1) of the Act issued by the assessing officer on 19.02.2020 in which at serial no. 5 of the annexure the assessing officer asked the assessee to furnish detail of loan taken/received and interest expenses etc. Then at serial no. 13 the assessing officer has asked the assessee to furnish the complete details of project wise opening stock, closing stock, work in progress etc. The AO has also asked as per serial no. 18 of the annexure to the notice to explain the method adopted by the assessee for booking profit and apportionment of expenditure in the light of various accounting standard in this regard such as AS-7. The AO has also asked the assessee to furnish the complete computation of income/profit project wise for each project from real estate business. In response vide submission dated 11.01.2021 the assessee has submitted detail of loan taken and interest provided. Vide submission dated 06.02.2021 the assessee has furnished project wise computation of sales and profit. The relevant extract of the same is reproduced as under:

Project	Units sold	Note on project
Teak Wood	2	This project was completed in the previous year. We had <u>two</u> units as stock in hand. We have sold them <u>as per details</u> given in separate sheet.
Pine Wood	36	This project is completed during the year. Units sold are recorded as sale is books and unsold units are appearing in books as unsold stock.
Red Wood	Nil	This is new project started in the previous year. This project is at very initial stage. No sale is recognized in the project.



2. Sr. no.13 - Details of project wise Work in progress and Finished Stock **attached**.
3. Sr. no. 18 -
- a. Computation of project wise Sales and Profit of completed and ongoing project:

**A. Teak Wood Project – Completed Project**

Particulars	Amount (Rs)
No. of Units Sold	2
Agreement Value of Units	1,18,84,645
Sales As per Books	1,18,84,645
Less : Cost of units as per WIP (Finished Goods)	88,09,703
Gross Profit	30,74,942

**B. Pine Wood Project – Completed Project**

Particulars		Amount (Rs)
No. of Units Sold		36
Agreement Value of Units (A)	20,78,44,608	
Less : Sales Recognized in A.Y. 2017-18 (B)	6,94,30,673	
Value of Units Sold (A – B) (C)		13,84,13,935
Add : Value of Other Service Provided (D)		50,04,000
Sales as per Books (C + D)		14,34,17,935
Less : Cost of Flat Sold (As per WIP)		7,30,97,891
Gross Profit		7,03,20,044

**C. Red Wood – Ongoing Project**

As the project is at initial stage no sales is booked.

**D. Computation of Income**

Particulars	Amount (Rs)
Gross Profit of Teak Wood Project (A)	30,74,942
Gross Profit of Pine Wood Project (B)	7,03,20,044
Total Gross Profit (A+B) (C)	7,33,94,986
Add : Interest on FD & Discount (60,290+16,763) (D)	77,053
Less : Indirect Expenses (As per Costing Sheet <b>enclosed</b> ) (E)	2,65,95,281
Net Profit as per P&L F = (C + D – E)	4,68,76,758

15. The assessee has further explained that in respect of all the three projects sales were recognized as per the guidance note of recognition of revenue by real estate developer issued by the institute of chartered accountant of India. Further we have also noticed the assessee has submitted work in progress account for the year ended on 31.03.2018 in respect of all three projects. Before the AO the assessee has also furnished detail of project wise cost sheet as placed at page no. 131-132 of the paper book.

16. After taking into consideration the entire material available on record it is evident that during the course of assessment proceeding assessee has filed the relevant copies of audit report and information pertaining to revenue recognition demonstrating that assessee has followed the percentage completion method and not the project completion method as mentioned by the ld. Pr.CIT in her order passed u/s 263 of the Act. In relation to the above the assessing officer has also called the various details like project wise value of work-in-progress and finished stock, detail of cost incurred and adjusted against sales reported project wise, party wise sale, receipts of each project and project wise gross profit etc. It is undisputed fact that it has also been brought to the notice of ld. Pr.CIT that it has already been verified in the assessment order passed u/s 143(3) for assessment year 2012-13 to 2015-16, 2017-18 and 2018-19 that assessee has constantly followed the percentage completion method. It is evident from the various information obtained by the assessing officer during the course of assessment proceedings that AO has verified and considered the various detail in respect of the method adopted by the assessee for recognizing the revenue. After taking into consideration the above facts and material on record, we find that ld. Pr.CIT has not disproved the material placed on record by the assessee in support of their claim that they have followed percentage completion method and not project completion method.

17. In respect of claim of TDR expenses of Rs.5 lac, it is undisputed fact that assessee was engaged in the business of construction and development of building. The assessee has explained that TDR was a right of construction in form of FSI relating to land and building which was part of stock in trade in the business carried out by the assessee, therefore, we consider that treating TDR in the nature of capital expenditure was not justified. The ld. Pr.CIT has not substantiated that

how the assessment order passed by the assessing officer is erroneous as well as prejudicial to the interest of revenue. Therefore, ground no.1 & 2 and 4 of the appeal of the assessee are allowed.

**Ground No.3: The Id. Pr.CIT has no jurisdiction to pass order u/s 263 of the Act:**

18. During the course of appellate proceedings before us the Id. Counsel submitted that assessment order has been passed under the faceless assessment scheme. He further stated that such scheme was notified vide CBDT notification dated 12.09.2019 and as per the scheme of NFAC and the jurisdiction has been vested in the NFAC to make assessment He further stated that as per notification no. 60/2020 dated 12.09.2019 issued u/s 143(3) of the Act as per para 5 (xvi) NFAC shall examine the order by way of automated examination tool and then finalized the assessment. After referring the above faceless scheme the Id. Counsel submitted that assessment order dated 02.03.2021 in the case of the assessee was passed by NEAC. He also stated that NEAC comprised of team of people including Pr.CCIT, CIT, Addl/Joint CIT and DCIT/ACIT. He submitted that since the assessment order was passed by team unit consisting of officers either senior to PCIT, Mumbai or similarly placed officer such order cannot be revised by PCIT, Mumbai u/s 263 of the Act. He also referred notification of the CBDT dated 13.08.2020 relating to procedure of assessment and notification dated 31.03.2021 pertaining to the Income Tax Authorities and notification dated 10.06.2022 pertaining to various income tax authorities specified for various place for the purpose of faceless assessment. He also referred SOP for assessment unit, verification unit, technical unit and review unit of REAC, dated 19.11.2020. Similarly, he filed copy of CBDT letter dated 13.08.2020 regarding setting up/reconstitution of NEAC under faceless assessment scheme 2019 and the other related notification. He further submitted that there is no notification to the

effect that power u/s 263 of the Act has to be exercised by the territorial PCIT. He further submitted that faceless assessing officer is subordinate to PCIT of assessment unit, therefore, territorial PCIT, Mumbai has no power to exercise his supervisory power u/s 263 of the Act. He also referred the various judicial pronouncements:

- i. *(1996) 57 ITD 328 (Bom) Trustees of Parsi Panchayat Funds & Properties vs. DIT*
- ii. *203 ITR 108 (Bom) CIT vs. Gabriel India Ltd.; 314 ITR 81(SC) CIT vs. Greenworld Corporation*
- iii. *152 TTJ (Mumbai) 265 Essar Steel Ltd. vs. Addl. CIT*
- iv. *ITA(TP) no. 3121and 3122/Mum./2013 Tata Communications Limited vs. DCIT dated 20.12.2013*
- v. *132 taxmann.com 231 (Del) Abha Bansal vs. PCIT*
- vi. *(1996) 57 ITD 328 (Bom) Trustees of Parsi Panchayat Funds & Properties vs. DIT]*
- vii. *Hon'ble Telangana High Court judgment in [2023] 156 taxmann.com 178 (Tel) Kankanala Ravindra Reddy vs. ITO*
- viii. *[1998] 231 ITR 53 (SC) CIT vs. Shree Manjunathesware Packing Products & Camphor Works.*
- ix. *346 ITR 443 (Bom) Ghanshyam K. Khabrani vs. ACIT:*

On the other hand, the ld. D.R has vehemently contended that the Pr.CIT-27, Mumbai had territorial jurisdiction over the case and correctly exercised the power to invoke provision of Sec. 263 of the Act. The ld. D.R has made reference to the various notification issued by the CBDT regarding the faceless assessment scheme. She further stated E-Assessment Scheme 2019 was renamed as Faceless Assessment Scheme vide CBDT notification dated 13.08.2020. Subsequently, Sec. 144B of the Income Tax 1961 was inserted in the I.T. Act w.e.f 01.04.2021 to provide the manner in which faceless scheme shall be conducted within the Income Tax Act itself. She further stated that as per Sec. 144B of the Act the National e-assessment shall after completion of the assessment, transfer all the electronic records of the case to the assessing officer having jurisdiction over the said case for such action as may be required under the Act. She also submitted that as per CBDT notification dated 31.03.2021 all the Income Tax

Authorities of Regional Faceless Assessment Center such as the concerned CCIT, PCIT, Addl/JCIT, DCIT/ACITs and ITOs shall exercise the power and functions of assessing officer concurrently to facilitate the conduct of faceless assessment proceedings u/s 144B of the Act. She particularly referred office memorandum dated 06.02.2023 issued by the CBDT on the issue of concurrent jurisdiction of the Faceless Assessment Unit and the original jurisdiction of the jurisdictional assessing officer. She vehemently contended that when the case is specifically assigned to assessment unit under the faceless assessment scheme it exercises concurrent jurisdiction till the completion of the assessment and the scope of the Faceless Assessment Scheme is limited to the making of the assessment in the selected case after which the electronic records pertaining to the assessment are transferred back to the jurisdictional Assessing Officer for other actions required under the Act. After referring the aforesaid scheme of Faceless Assessment she submitted that in the case of the assessee after completion of the assessment for the year under consideration the case was transferred electronically to the DCIT-27(3), Mumbai for other actions required under the Act. Consequently, thereafter the PCIT-27, Mumbai had initiated proceedings u/s 263 of the Act on 01.03.2023 and contended that the PCIT, -27, Mumbai has correctly exercised the revisionary jurisdiction and supervisory jurisdiction conferred upon by Sec. 263 of the Income Tax Act 1961. She has also submitted that concurrent jurisdiction of the PCIT (Assessment Unit) has been restricted to the conduct of faceless assessment proceedings only u/s 144B of the Act and it does not extend to the exercise of power u/s 263 of the Act and neither separate notification has been issued by the CBDT nor the provision of the Income Tax Act have been amended by the legislature for granting power to exercise jurisdiction u/s 263 of the Act to the PCIT (assessment unit). She has also referred the decision of Hon'ble Kolkata

High Court in the case of Sanghi Steel Udyog Private Ltd. vs. Union of India & Ors. WPO/1549/2023 dated 13.09.2023

19. Heard both the sides and perused the material on record. As discussed the Faceless Assessment Scheme was notified vide the CBDT notification dated 12.09.2019 for the purpose of making assessment of total income or loss for the assessee as u/s 143(3) of the Act. Subsequently, Sec. 144B was inserted in the Income Tax Act w.e.f 01.04.2021 to provide the manner in which faceless assessment shall be conducted within the Income Tax Act. We have perused the S.O. 2745(E) dated 13.08.2020 wherein procedure for e-assessment has been given as per clause 4(iv) the National E-assessment Center shall assigned the case selected for the purpose of e-assessment under this scheme to a specific assessment unit in anyone regional assessment center through an automated allocation assessment. Further as per clause 4 (xxvi) under the procedure for assessment it is laid down that National e-Assessment Center shall, after completion of assessment transfer all the electronic record of the case to the assessing officer having jurisdiction over the said case for such action has may be required under the Act. We have also perused the provision of Sec. 144B of Faceless Assessment Scheme 2021 inserted w.e.f 01.04.2021. The relevant provision of Sec. 144B is reproduced as under:

*“144B. [(1) Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or re-computation under sub section (3) of section 143 or under section 144 or under section 147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:-*

- (i) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system;*
- (ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;*

- (iii) *a notice shall be served on the assessee, through the National Faceless Assessment Centre, under sub-section (2) of section 143 or under sub-section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the National Faceless Assessment Centre which shall forward the same to the assessment unit;*
- (iv) *where a case is assigned to the assessment unit, under clause (1), it may make a request through the National Faceless Assessment Centre for-*
  - (a) *obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;*
  - (b) *conducting of enquiry or verification by verification unit;*
  - (c) *seeking technical assistance in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit;*
- (v) *where a request under sub-clause (a) of clause (iv) has been initiated by the assessment unit, the National Faceless Assessment Centre shall serve appropriate notice or requisition on the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit and the assessee or any other person, as the case may be, shall file his response to such notice within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre which shall forward the reply to the assessment unit;*
- (vi) *where a request,-*
  - (a) *for conducting of enquiry or verification by the verification unit has been made by the assessment unit under sub-clause (b) of clause (iv) the request shall be assigned by the National Faceless Assessment Centre to a verification unit through an automated allocation system; or*
  - (b) *for reference to the technical unit has been made by the assessment unit under sub-clause (c) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a technical unit through an automated allocation system;*
- (vii) *the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, as the case may be based on the request referred to in clause (vi) to the concerned assessment unit,*
- (viii) *where the assessee fails to comply with the notice served under clause (v) or notice issued under sub-section (1) of section 142 or the terms of notice issued under sub-section (2) of section 143, the National Face less Assessment Centre shall intimate such failure to the assessment unit,*
- (ix) *the assessment unit shall serve upon such assessee, as referred to in clause (viii), a notice, through the National Faceless Assessment Centre, under section 144, giving him an opportunity to show-cause on a date and time as specified in such notice as*

*to why the assessment in his case should not be completed to the best of its judgment,*

- (x) the assessee shall, within the time specified in the notice referred to in clause (ix) or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment Centre which shall forward the same to the assessment unit;*
- (xi) where the assessee fails to file response to the notice served under clause (ix) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;*
- (xii) the assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing-*
  - (a) an income or loss determination proposal, where no variation prejudicial to assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre, or*
  - (b) in any other case, a show cause notice stating the variations prejudicial to the interest of assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the National Faceless Assessment Centre;*
- (xiii) the assessee shall file his reply to the show cause notice served under sub-clause (b) of clause (xii) on a date and time as specified therein of such time as may be extended on the basis of an application made in this regard, to the National Faceless Assessment Centre, which shall forward the reply to the assessment unit;*
- (xiv) where the assessee fails to file response to the notice served under sub clause (b) of clause (xii) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit,*
- (xv) the assessment unit shall, after considering the response received under clause (xiii) or after receipt of intimation under clause (xiv), as the case may be, and taking into account all relevant material available on record, prepare an income or loss determination proposal and send the same to the National Faceless Assessment Centre;*
- (xvi) upon receipt of the income or loss determination proposal, as referred to in sub-clause (a) of clause (xii) or clause (xv), as the case may be, the National Faceless Assessment Centre may, on the basis of guidelines issued by the Board-*
  - (a) convey to the assessment unit to prepare draft order in accordance with the income or loss determination proposal, which shall thereafter prepare a draft order, or*



- (b) *assign the income or loss determination proposal to a review unit through an automated allocation system, for conducting review of such proposal,*
- (xvii) *the review unit shall conduct review of the income or loss determination proposal assigned to it by the National Faceless Assessment Centre, under sub-clause (b) of clause (xvi), whereupon it shall prepare a review report and send the same to the National Faceless Assessment Centre,*
- (xviii) *the National Faceless Assessment Centre shall, upon receiving the review report under clause (xvii), forward the same to the assessment unit which had proposed the income or loss determination proposal;*
- (xix) *the assessment unit shall, after considering such review report, accept or reject some or all of the modifications proposed therein and after recording reasons in case of rejection of such modifications, prepare a draft order;*
- (xx) *the assessment unit shall send such draft order prepared under sub-clause (a) of clause (xvi) or under clause (xix) to the National Faceless Assessment Centre;*
- (xxi) *in case of an eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee, as mentioned in sub-section (1) under section 144C, the National Faceless Assessment Centre shall serve the draft order referred to in clause (xx) on the assessee;*
- (xxii) *in any case other than that referred to in clause (xxi), the National Faceless Assessment Centre shall convey to the assessment unit to pass the final assessment order in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the National Faceless Assessment Centre;*
- (xxiii) *upon receiving the final assessment order as per clause (xxii), the National Faceless Assessment Centre shall serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment,*
- (xxiv) *where a draft order is served on the assessee as referred to in clause (xxi), such assessee shall,-*
- (a) *file his acceptance of the variations proposed in such draft order to the National Faceless Assessment Centre, or*
- (b) *file his objections, if any, to such variations, with-*
- (i) *the Dispute Resolution Panel, and*
- (ii) *the National Faceless Assessment Centre,*
- within the period specified in the sub-section (2) of section 144C;*

- (xxv) *the National Faceless Assessment Centre shall-*
- (a) *upon receipt of acceptance from the eligible assessee; or*
  - (b) *if no objections are received from the eligible assessee, within the period specified in sub-section (2) of section 144C, intimate the assessment unit to complete the assessment on the basis of the draft order,*
- (xxvi) *the assessment unit shall, upon receipt of intimation under clause (xxv), pass the assessment order, in accordance with the relevant draft order, within the time allowed under sub-section (4) of section 1440 and initiate penalty proceedings, if any, and send the order to the National Faceless Assessment Centre,*
- (xxvii) *where the eligible assessee files objections with the Dispute Resolution Panel, under sub-clause (b) of clause (xxiv), the National Faceless Assessment Centre shall send such intimation along with a copy of objections filed to the assessment unit;*
- (xxviii) *the National Faceless Assessment Centre shall, in a case referred to in clause (xxvii), upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the assessment unit;*
- (xxix) *the assessment unit shall, in conformity with the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, complete the assessment within the time allowed in sub-section (13) of section 144C and initiate penalty proceedings, if any, and send a copy of the assessment order to the National Faceless Assessment Centre:*
- (xxx) *the National Faceless Assessment Centre shall, upon receipt of the assessment order referred to in clause (xxvi) or clause (xxix), as the case may be, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or the amount of refund due to the assessee on the basis of such assessment,*
- (xxxi) *the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the provisions of this Act,*
- (xxxii) *if at any stage of the proceedings before it, the assessment unit having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing refer the case to the National Faceless Assessment Centre stating that the provisions of sub-section (2A) of section 142 may be invoked and such case shall be dealt with in accordance with the provisions of sub-section (7)*

- (2) *The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board*
- (3) *The Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:-*
- (i) *a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner,*
  - (ii) *such assessment units, as it may deem necessary to conduct the Faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under this Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment, and the term "assessment unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board,*
  - (iii) *such verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term 'verification unit', wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board:*

*Provided that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act, and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit,*

- (iv) *such technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under section 90 or 90A, which may be required in a particular case or a class of cases, under this section and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;*
- (v) *such review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xvi) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues requiring addition or*

*disallowance have been incorporated and such other functions as may be required for the purposes of review and the term "review unit". wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board.*

(4) *The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely-*

(i) *Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be,*

(ii) *Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;*

(iii) *such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.*

(5) *All communications,-*

(i) *among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;*

(ii) *between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and*

(iii) *between the National Faceless Assessment Centre and various units shall be exchanged exclusively by electronic mode:*

*Provided that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this behalf.*

(6) *For the purposes of faceless assessment*

(i) *an electronic record shall be authenticated by*

(a) *the National Faceless Assessment Centre by way of an electronic communication:*

(b) *the assessment unit or verification unit or technical unit or review unit, as the case may be, by affixing digital signature;*

(c) *assessee or any other person, son, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal;*

(ii) *every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of-*

- (a) *placing an authenticated copy thereof in the registered account of the assessee, or*
- (b) *sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or*
- (c) *uploading an authenticated copy on the Mobile App of the assessee, and followed by a real time alert;*
- (iii) *every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert,*
- (iv) *the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;*
- (v) *the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000);*
- (vi) *a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under this section;*
- (vii) *in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit;*
- (viii) *where the request for personal hearing has been received, the income tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible in accordance with the procedure laid down by the Board;*
- (ix) *subject to the proviso to sub-section (5), any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to*

*the extent technologically feasible, in accordance with the procedure laid down by the Board;*

- (x) the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end;*
- (xi) the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre and the units set up, in an automated and mechanised environment.*

*(7) (a) The Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (24) of section 142 may be invoked in the case,-*

*(i) forward the reference received from an assessment unit under clause (xxxii) of sub-section (1) to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such case, and inform the assessment unit accordingly;*

*(ii) transfer the case to the Assessing Officer having jurisdiction over such case in accordance with sub-section (8);*

*(b) where a reference has been received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under sub-clause (1) of clause (a), he shall direct the Assessing Officer, having jurisdiction over the case, to invoke the provisions of sub-section (24) of section 142;*

*(c) where a reference has not been forwarded to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner of Commissioner, having jurisdiction over the case, in a case referred to in sub-clause (1) of clause (a), the assessment unit shall proceed to complete the assessment procedure laid down in this section. t in accordance with the*

*(8) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.]*

*(9)[Omitted by the Finance Act, 2022, w.r.ef. 1-4-2021.]*

*(10) [Omitted by the Finance Act, 2022, w.e.f. 1-4-2022.]*

*Explanation-In this section, unless the context otherwise requires-*

*(a) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(b) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288;*

*(c) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources,*

*(d) "automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;*

*(e) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(f) "computer system" shall have the same meaning as assigned to it in clause (1) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(g) "computer resource of assessee shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered email address of the assessee with his email service provider,*

*(h) "digital signature shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 29 of the Information Technology Act, 2000 (21 of 2000);*

*(i) "designated portal" means the web portal designated as such by the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre;*

*(j) "Dispute Resolution Panel" shall have the same meaning as assigned to it in clause (a) of sub-section (15) of section 144C;*

*(k) "faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;*

*(l) "electronic record" shall have the same meaning as assigned to it in clause (1) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*91[(la) "electronic verification code" means a code generated for the purpose of electronic verification n as per t the data structure and standards specified by the Principal Director General or Director General, as the case may be, in-charge of information technology;]*

(m) "eligible assessee" shall have the same meaning as assigned to in clause (b) of sub-section (15) of section 144C;

(n) "email" or "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message,

(o) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-section (2) of section 3 of the Information Technology Act, 2000 (21 of 2000);

(p) "Mobile app" shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;

(q) 96[\*\*\*]

(r) "real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, of by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;

(s) "registered account of the assessee means the electronic filing account registered by the assessee in designated portal:

(t) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including-

(i) the e-mail address available in the electronic filing account of the addressee registered in designated portal; or

(ii) the e-mail address available in the last income-tax return furnished by the addressee, or

(iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or

(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs, or

(vi) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;

(u) registered mobile number of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user



*profile of the electronic filing account registered by the assessee in designated portal;*

*(v) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.]”*

Under the Sec. 144B the whole procedure of faceless assessment has been specified. As per the detailed procedure laid down in clause xxxi of sub-section (1) of Sec. 144AB of the Act the National e-Assessment Center shall after completion of the assessment, transfer all the electronic records of the case to the assessing officer having jurisdiction over the said case for such action as may be required under the provisions of the Act. It is evident from the provision of Sec. 144B of the Act that once after completion of assessment the faceless assessment unit transfer all the electronic record of the case to the assessing officer having territorial jurisdiction thereafter for all the other action the jurisdiction is vested with the assessing officer having territorial jurisdiction and the PCIT having such territorial jurisdiction. The provision of Section 263 is invoked after the completion of the assessment on examination of record of any proceedings under the Act, therefore, once the assessment record is transferred by the faceless unit to the assessing officer having territorial jurisdiction then no action u/s 263 of the Act is possible with the PCIT who was having jurisdiction of the faceless assessment unit. We further noticed that the faceless assessment unit does not pass the assessment order after obtaining the approval of PCIT and the PCIT in the faceless assessment system has only administrative supervisory on the functioning of faceless assessment unit till the completion of faceless assessment.

20. We find that the case law referred by the Id. Counsel are distinguishable on the fact from the case of the assessee. The case of Trustees of Parsi Panchayat Funds & Properties Vs. DIT referred by the

Id. Counsel of ITAT, Mumbai is pertained to the issue of similarity between the jurisdiction of the directors and Commissioners with reference to the assessment falling under the provisions of Sec. 11 & 12 of the Act because director of Income Tax has been appointed to carry out the functions of commissioner of assessing persons and grant them the status of charitable and religious trust. However, the fact of the case of the assessee are entirely different pertaining to the jurisdiction of territorial PCIT for making revision of assessment u/s 263 of the Act. Further we find that other decision in the case of Kankanala Ravindra Reddy Vs. ITO (2023) 156 taxmann.com 178 (Telangana) is pertained to the different issue of reassessment u/s 147/148 and 148 in a faceless manner and not pertained to the issue of revisionary power of PCIT u/s 263 of the Act. The case of CIT Vs Shree Manjunathesware Packing Products & Camphor Works (1998) 96 taxman 1 (SC) is also pertained to different proposition of invoking Sec. 263 on the basis of valuation report submitted by DVO. Similarly the case of Ghanshyam K. Khabrani Vs. ACIT, circle 1 (2012) 20 taxman.com 716 (Bom) is related to different issue of issuing of notice u/s 148 that there is no statutory provision under which a power of Addl. CIT to be exercised by the Commissioner of Income Tax. We have also gone through the decision of Essar Steel Ltd. Vs. Additional Commissioner of Income Tax, vide ITA No.4007/Mum/2010 AY: 2005-06, this case is pertained to the issue of jurisdiction of the CIT over the TPO for initiating proceeding u/s 263 of the Act. Since, the TPO is different from the assessing officer as he perform the transfer pricing function under the Director of Income Tax Transfer Pricing, therefore, CIT has no jurisdiction for the TPO whereas in the case of the assessee the facts are totally different pertaining to jurisdiction of territorial PCIT. The case of CIT Vs. Gabriel India Ltd. (1993) 71 Taxman 585 (Bom). Pertained to the issue of power of suo moto revision is in the nature of supervisory jurisdiction and such

power by the supervisory authority can be exercise only if the circumstances specified therein exist. We find that the fact of the case of the assessee are entirely different. The case of Tata Communication Limited Vs. Dy.CIT, Range 1(3) vide ITA No. 3121/Mum/2013 dated 20.12.2013 is pertained to the different issue of the jurisdiction over the TPO which is different from the fact of the case of the assessee as we have already discussed in the case of Essar Steel Ltd. Vs. Additional Commissioner of Income Tax, vide ITA No.4007/Mum/2010 AY: 2005-06. The Id. Counsel also referred the case of Smt. Abha Bansal Vs. Pr.CIT, (Central) Gurgaon (2021) 132 taxmann.com 231 (Delhi – Trib) we find that fact of the case are entirely different and it is pertained to the issue when the assessment order is passed after getting approval of JCIT u/s 153C, therefore, Pr.CIT has no jurisdiction to revise the order u/s 263 of the Act. However, in the case of the assessee assessment order was not passed with any specific approval of the PCIT faceless assessment. Therefore, this case law is not applicable to the case of the assessee.

Similarly, the other case referred by the Id. Counsel are entirely different on fact and issue from the case of the assessee on the fact of completion of faceless assessment u/s 144B of the Act and thereafter exercising of revisional jurisdiction by the jurisdiction PCIT u/s 263 of the Act.

We have perused the decision of Hon'ble Kolkala High Court in the case of Sanghi Steel Udyog Private Ltd. vs. Union Of India & Ors as referred by the Id. D.R regarding issue of notice u/s 148 of the Act. The Hon'ble High Court has categorically held that the Act does not distinguish between jurisdictional assessing officer or NFAC with respect to jurisdictional over a case. This is further corroborated by the fact that u/s 144B of the Act the record in a case are transferred back to the jurisdictional assessing officer the assessment proceedings are

completed. The Hon'ble High Court also held that Sec. 144B of the Act lays down the role of NFAC and the units under it for specific purpose of conduct of assessment proceedings in a specific case in a particular assessment year. Hon'ble High Court has further held that this cannot be construed meaning that the jurisdictional assessing officer is bereft of the jurisdiction over particular assessee or with respect to procedure not falling under the ambit of Sec. 144B of the Act. We find that this is the case referred by the Id. Counsel wherein the Hon'ble High Court has discussed the nature of jurisdiction u/s 144B of the Act which clearly pointed out that both the jurisdictional assessing officer and NFAC have concurrent jurisdiction. In the light of the above facts and finding we consider that once the record are transferred to the jurisdictional assessing officer on completion of assessment the jurisdictional PCIT assume jurisdiction therefore can exercise power u/s 263 of the Act over the order passed by the faceless assessment unit. Therefore, we don't find any merit in the ground no. 3 of the appeal of the assessee and the same stand dismissed.

16. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 09.02.2024

Sd/-

(Vikas Awasthy)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai  
Date 09.02.2024  
Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**