

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'E': NEW DELHI.**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3444/Del/2025
(Assessment Year: 2015-16)**

Harun Ali,
853/22, South Khalapar,
Muzaffarnagar – 251 002 (Uttar Pradesh).

vs. Pr.CIT,
Dehradun.

(PAN : ABWPA4042P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Rano Jain, Advocate
Shri Venketesh Chaurasia, Advocate
Ms. Mansi Jain, Advocate

REVENUE BY : Ms. Amisha S. Gupt, CIT DR

Date of Hearing : 09.10.2025
Date of Order : 07.01.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Pr.Commissioner of Income Tax, Dehradun [“Ld. PCIT”, for short] dated 27.03.2025 for the Assessment Year 2015-16.
2. Brief facts of the case are, the assessee filed its return of income under section 139 (1) of the Income-tax Act, 1961 (for short ‘the Act’) on 31.10.2015 declaring total income of Rs.1,25,45,500/- . The case of the

assessee was selected for limited scrutiny through CASS for the following reasons :-

- (i) Tax credit claimed in ITR is less than tax credit available in 26AS;
- (ii) Mismatch in sales turnover reported in Audit Report and ITR; and
- (iii) Substantial increase in capital in the year and sundry creditors.

3. The assessment was completed on 21.11.2017 under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') assessing the income at Rs.1,44,86,900/- with addition of Rs.19,41,395/- on account of unverified credit balances outstanding against some labour suppliers or labour contractors/sub-contractors. Subsequently, the assessment records were verified by the ld. PCIT, Dehradun and found that certain labour and material payable against the payments due to 68 labour suppliers/contractors amounting to Rs.3,15,51,485/- shown in the balance sheet as on 31.03.2015. After considering the assessment records and submissions of the assessee, ld. PCIT treated the assessment order passed u/s 143(3) of the Act as erroneous and prejudicial to the interest of Revenue for the simple reason that assessee has not cooperated during the proceedings.

4. Aggrieved with the above order, assessee preferred an appeal before the ITAT and coordinate Bench has remanded the issue back to the ld. PCIT

to give one more opportunity to the assessee as the assessee could not submit the relevant information due to pandemic period. Based on the directions of the coordinate Bench, ld. PCIT issued notices to the assessee and after giving several opportunities, assessee has made detailed submissions which are reproduced at the impugned order. After considering the detailed submissions of the assessee, ld. PCIT rejected the plea of the assessee and held as under :-

“6.6. A perusal of the records reveals that the assessee during the period had made a payments of a sum of Rs. 4,51,26,91.3/- to the labour/suppliers. The assessee has submitted that there was no contractual payments and all the payments have been made in employer/employee capacity.

6.6.1. During the current proceedings, the assessee has submitted that the assessee has paid Building & Other Construction Workers Welfare Cess (Labour Cess) amounting to Rs.13,98,383/-; certified by the auditors in their report in Form 3CD at Sl. No.34 that there is no contractual payment liable for TDS; the payment to the said persons has been made on behalf of labour employed on daily basis through the medium of head labourer; instead of recording the name of all the laborers, the name of the person through whom such laborers had been engaged was recorded in the books of accounts; and there is employer/ employee relation directly between the assessee and the individual labour. The basic flaw in the assessee's argument is that the payment has been made to the Contractor's and not to the laborers, individually. The assessee was asked specifically whether payment was done to individual labourer and the assessee denied the' same. Further, no payment of gratuity or PF payments has been made by the assessee for such labour. The argument of Labour Cess does not help the case of the assessee, as normally in contractual payments, these are paid by either of the parties, depending on mutual agreement. It is also observed that the Assessee has not filed any evidence with regard to payment of gratuity or PF payments made by the assessee for such labour. Hence, the issue of applicability of dis-allowance u/s

40a(ia) [30% of Rs.4,51 ,26,913/- i.e Rs. 1,35,38,074/-] has to be examined afresh.”

5. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

“1. On the facts and circumstances of the case, the order passed by the learned Principal Commissioner of Income Tax (Pr. CIT) under Section 263 of the Act is bad, both in the eyes of law and on facts.

2. On the facts and circumstances of the case, the learned Pro CIT has erred both on facts and in law assuming jurisdiction under section 263 in the absence of twin conditions of the order passed by the Ld. AO being erroneous as well as prejudicial to the interest of the Revenue, being satisfied.

3(i) On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in assuming the jurisdiction under section 263 of the Act, ignoring the fact that the issue in question being not before the Ld. AO as the assessment was done under limited scrutiny, as such there was no error in the assessment order.

ii) On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the Ld. AO by that of the Pr.CIT.

4. On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of lack of enquiry, not in the case of inadequate enquiry.

5. On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in setting aside the matter to the file of the AO without giving a finding as to the error and prejudice caused to the revenue by the assessment order, and as such the order passed is bad in law and liable to be quashed.

6. On the facts and circumstances of the case, ld. PCIT has erred both on facts and in law in considering the assessment proceedings in pursuance of earlier order under section 263 of the Act, as the same has become infructuous after the decision of hon'ble ITAT.

7. On the facts and circumstances of the case, the Ld Pr CIT has erred both on facts and in law in setting aside the issues of :

- i. on account of unverified credit balance outstanding,
- ii. on account of verification of expenses on labour and material,
- iii. on account of verification of payments to M/s. Anand Marketing,
- iv. on account of applicability of disallowance u/s 40a(ia) examination afresh.

to the file of the Ld AO without properly appreciating the fact that the assessment was under limited scrutiny.”

6. At the time of hearing, ld. AR of the assessee submitted that the assessment was completed u/s 143(3) based on the criteria of selection under CASS and accordingly assessment was completed based on the various material submitted before the Assessing Officer. He submitted that even for the second round of proceedings initiated u/s 263 of the Act, ld. PCIT has rejected the submissions of the assessee wholly relying on certain issues which were not the purpose for which the assessment was selected for scrutiny i.e. limited scrutiny. He prayed that the issue under consideration is outside the purview of section 263 of the Act as the Assessing Officer has already took possible view on the material

submitted by the assessee on the basis of selection criteria, therefore, he prayed that the appeal preferred by the assessee may be allowed.

7. On the other hand, ld. DR of the Revenue relied on the findings of the lower authorities.

8. Considered the rival submissions and material placed on record. We observed that the assessment in the case of the assessee was selected for the following purposes :-

- (i) Tax credit claimed in ITR is less than tax credit available in 26AS;
- (ii) Mismatch in sales turnover reported in Audit Report and ITR; and
- (iii) Substantial increase in capital in the year and sundry creditors.

9. Based on the above criteria, the assessment u/s 143(3) was completed after duly verifying the records submitted by the assessee and completed the assessment. While verifying the assessment records, ld. PCIT in the first round as well as second round observed that assessee has made certain payments to contractors/sub-contractors for the hiring of labourer on which assessee has made cash payments as well as not deducted any TDS. Even though these payments fall under the contractual payments. After considering the detailed submissions of both the parties, we observed that the assessment was selected for limited scrutiny as

discussed above and there is no mandate for the Assessing Officer to go beyond the selection criteria. Therefore, ld. PCIT has taken up a fresh issue which was not the mandate of the assessment. Therefore, the issue raised by the ld. PCIT is outside the selection criteria, hence the provisions of section 263 are not applicable in this case. Accordingly, grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 7TH day of January, 2026.

**SD/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

**SD/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 07.01.2026
TS**

Copy forwarded to:

1. Appellant
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**