

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1024/M/2022
Assessment Year: 2017-18**

M/s. Coronate Constructions, Ground Floor, Meghdoot, Vallabhbaug Lane, Ghatkopar – East, Mumbai – 400 077 PAN: AAEFC1996P	Vs.	PCIT-27, 401, 4 th Floor, Tower No.6, Vashi Railway Station, Commercial Complex, Vashi, Navi Mumbai – 400 703
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharan Gandhi, A.R.
Revenue by : Shri Manoj Kumar Sinha, D.R.

Date of Hearing : 15 . 09 . 2023

Date of Pronouncement : 09 . 11 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Coronate Constructions (hereinafter referred to as ‘the assessee’) by filing present appeal sought to set aside the impugned order passed by the Principal Commissioner of Income Tax (for short ‘the PCIT’) under section 263 of the Income Tax Act, 1961 (for short ‘the Act’) by invoking the revisionary jurisdiction for the assessment order dated 22/12/2019 assessing the total income at Rs.1,99,14,700/- by the Assessing Officer (AO) under section 143(3) of the Act on the grounds inter-alia that:

“1. The Ld. PCIT erred in invoking jurisdiction u/s 263 of the Act vide order dated 10.03.2022 and erred in setting aside the assessment order passed u/s 143(3) of the Act dated 22.12.2019. The order passed u/s 263 of the Act dated 10.03.2022 is bad in law.

1.1. The Ld. AO has applied his mind to the issue under consideration and has made proper inquiries and therefore, the order u/s 143(3) of the Act dated 22.12.2019 is not erroneous and prejudicial to the interest of the revenue.

1.2. The issue being a debatable issue, cannot be subject matter of revision u/s 263 of the Act, as the order u/s 143(3) of the Act dated 22.12.2019 cannot be considered as erroneous and prejudicial to the interest of the revenue.

2. 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 10.03.2022.

3. The Ld. PCIT erred in holding that annual value of the property forming part of closing stock, should be taxed under the head "Income from House Property".

3.1. The Ld. PCIT failed to take into consideration the amendment brought in by Finance Act, 2017 w.e.f. AY 2018-19 in this regard.

3.2. The Ld. PCIT has also failed to take into consideration the judgments relied upon in this regard.

3.3. The Ld. PCIT has also failed to take into consideration the fact that out of 10 unsold units, advance consideration was received from buyers in respect of 8 units and that 2 units were used site office cum godown for storage of certain building material and therefore, these flats are incapable of being let out.

4. 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. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company is into the business of purchasing and selling of flats, carrying on developing activities as builders and developers and is following work in progress method for declaring profit from construction project. The assessee company filed the return of income for the year under consideration declaring total income of Rs.1,99,14,700/-

which was subjected to scrutiny. The AO after examining and verifying the submissions made by the assessee in response to the notice/questionnaire accepted the self assessed income of the assessee as under:

Particulars	Amount in Rs.
Profit and gains from business & profession (As per return)	19927198
Gross Total Income	19927198
Deduction u/s Chapter VIA	12500
Total Income	19914698
Rounded Off u/s 288A	19914700

3. However Ld. PCIT by invoking the revisionary jurisdiction prima-facie found the assessment order passed by the AO under section 143(3) of the Act as erroneous in so far as it is prejudicial to the interest of the revenue and thereby set aside the same by way of issuance of notice under section 263 of the Act which is as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Mumbai 27

To,
CORONATE CONSTRUCTIONS
GR FLR, MEGHDOOT, VALLABH BAUG
LANE CHATKOPAR (E)
MUMBAI 400077, Maharashtra
India

PAN/TAN: AAEPG1898P AY: 2017-18 DIN & Notice No: ITMUMBAI/PCIT/1024/2022-23 (03/03/2022) Dated: 21/02/2022

NOTICE FOR THE HEARING

Subject: Notice for hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year 2017-18.

In this regard, a hearing in the matter is fixed on **23/02/2022 at 03:04 PM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

Please refer to the above:

On perusal of records, it is observed that your case for A.Y. 2017-18 was selected under CASS for complete scrutiny. The issues identified for verification were:

1. Large investment in property
2. Real estate business with high closing stock
3. High turnover reported in Service Tax as compared to ITR
4. Large squared up loan

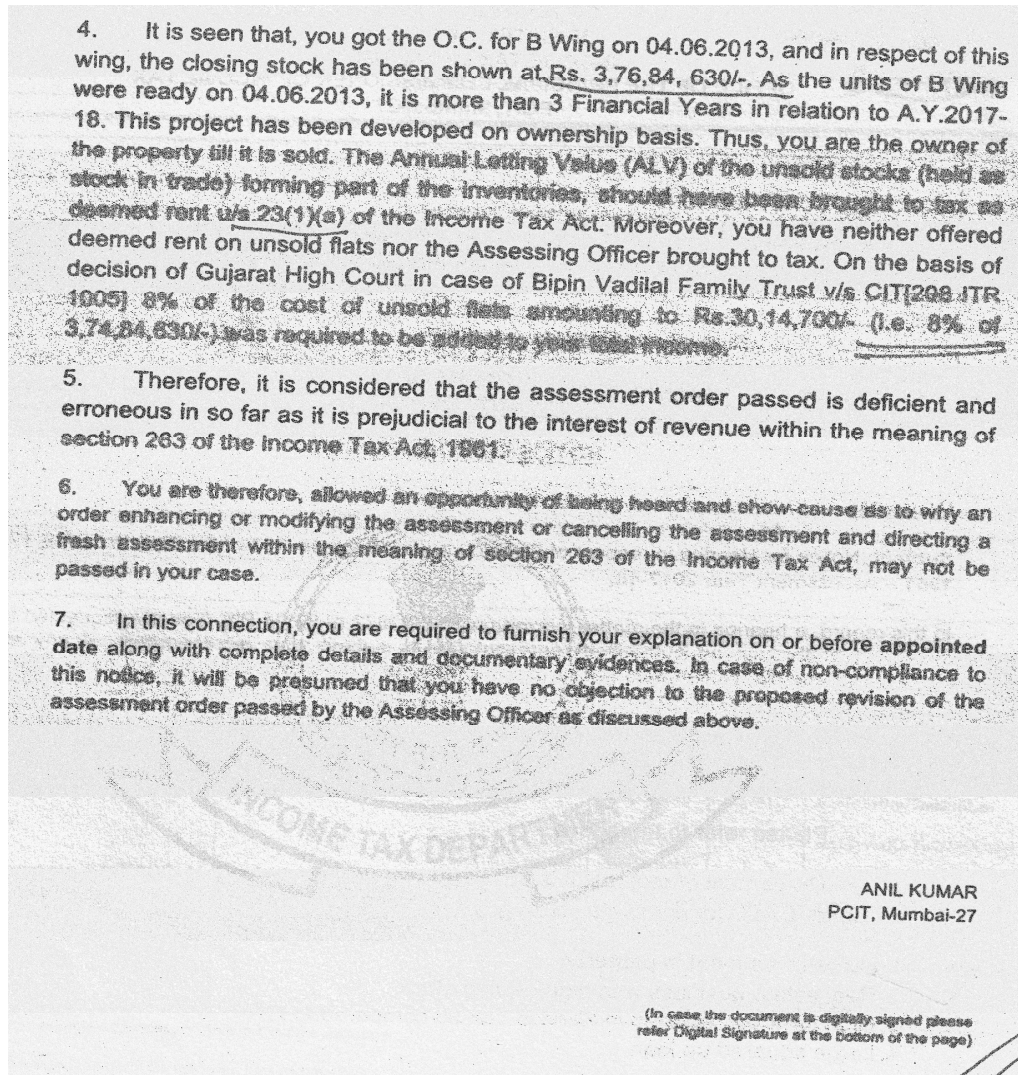
2. Assessment in your case was completed u/s 143(3) vide order dated 22.12.2019 wherein income declared in return of income at Rs.1,99,14,700/- was accepted as assessed income.

3. Vide your submission dated 11.11.2019; you had undertaken a project 'Dhanji Shamji Corporate Square', comprising of three wings A, B & C. As per details, you had got the Occupation Certificate (O.C.) of 'B' Wing on 04.06.2013.

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:407, 4th Floor, TOWER NCL 9, VASCO RAILWAY STATION COMMERCIAL COMPLEX, 19/58, HAWA NERVAI, Maharashtra, 400703
Email: MUMBAI.PCIT27@INCOMETAX.GOV.IN, Office Phone: 62227012945

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in
* DIN- Document Identification No.

True Copy



4. After considering the written submissions and contentions raised by the assessee company the Ld. PCIT reached the conclusion that the AO while making the assessment under section 143(3) of the Act for the year under consideration has failed to tax the annual value of the property forming part of the closing stock under the head "income from house property" and thereby held the assessment order passed under section 143(3) of the Act as erroneous in so far as it is prejudicial to the interest of the revenue.

5. Aggrieved with the impugned order passed by the Ld. PCIT under section 263 of the Act the assessee company has come up before the Tribunal by way of filing present appeal.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

7. In the backdrop of the aforesaid facts and circumstances of the case the sole question arises for determination is:-

"The sole issue flagged by the Ld. PCIT by invoking the revisionary jurisdiction under section 263 of the Act is the AO has failed to tax the annual value of the property farming part of the closing stock under the head "income from house property".?

8. Undisputedly assessee company has got OC for B wing on 4/6/2013 and in respect of this wing the closing stock has been shown at Rs.3,76,84,630/- as the unit of B wing was ready on 4/6/2013 more than three financial years have come into picture in relation to the year under consideration i.e. A.Y.2017-18. The Ld. PCIT has taken the view that since this project has been developed on ownership basis assessee company was owner of the property till it is sold and the annual letting value (ALV) of the unsold stock (held as stock in trade) farming part of the inventory should have been brought to tax as deemed rent under section 23(1)(a) of the Act, whereas the assessee has neither offered deemed rent of unsold flats nor the AO brought the same to tax.

9. The Ld. A.R. for the assessee challenging the impugned order contended that the assessment order passed by the AO is

neither erroneous nor prejudicial to the interest of the revenue as the entire issue raised in the notice under section 263 of the Act has been duly examined by the AO in the course of assessment proceedings and after examining and verifying the details the same has been accepted. The Ld. A.R. for the assessee further contended that the assessee has submitted detailed explanation relating to the each project undertaken by the assessee, details of inventory held as stock in trade as on 31/3/2016 and 31/3/2017, reconciliation of opening and closing stock in trade along with addition made and sales, and details of the advance receipt against flat booking. It is further contended by Ld. A.R. for the assessee that the AO was aware of the fact that out of 10 offices which were unsold as on 31/3/2017 the booking advance of 8 offices was received before 31/3/2017 and the remaining two offices were used as place for keeping raw material of the project. It is also contended that the entire details have been shown in the balance sheet under the head "advance received" against booking and since booking amount is received the same cannot be put to use for earning rent and drew our attention towards audited financials available at page 1 to 26 of the paper book.

10. The Ld. A.R. for the assessee challenging the impugned order further contended that the AO has raised specific query in the notice dated 3/7/2019 issued under section 142(1) of the Act available at page 33 to 37 of the paper book wherein queries inter-alia were as under:

“2. Please furnish detail of unit wise inventory of your stock in trade as on 01.04.2016 and 31.03.2017.

3. Please furnish method of accounting followed for valuation of closing stock along with detailed calculation of the same.

4. Please furnish reconciliation of opening and closing stock along with additions) made and sales made during the year.

5. Please furnish detail of profit/loss recognized on sale of stock during the year along with the calculation thereof.

6. Please provide detail of all the capital asset sold during the year in following format along with copy of sale deed and supporting vouchers/ledgers substantiating your claim.

Description of asset	Date of sale	Consideration (Rs.)	Date of purchase	Amount of purchase consideration	Cost of improvement if any	Details of TDS deducted on above transaction

11. The Ld. A.R. for the assessee further contended that pursuant to the queries raised the detailed reply was filed vide letter dated 09.07.2019 available at page 38 to 41 of the paper book, the relevant paras thereof are as under:

“(v) The commercial Project "Damji Shamji Corporate Square" has been undertaken by the assessee-firm which consists of 3 wings. The details of all the each wing is as under:-

- The Commencement Certificate for Wing A has been received on 08.09.2006 and 64.61% of the construction was completed as on 31.03.2017 on the basis of construction cost incurred till 31.03.2017 to total projected construction cost. However no gross profit had been declared as Gross Profit had been overbooked in previous years. The copy of WIP A/c and Working of Gross profit till 31.03.2017 has been attached herewith.

- Occupation certificate for Wing B has been received on 04.06.2013. During the year, gross profit of Rs. 2,56,58,922/- is declared in respect of Wing B, on account of sale of Opening Stock. The copy of WIP A/c reflecting the details of area in stock and area sold of Wing B has been attached herewith. The calculation of valuation of closing stock of Wing B project is attached herewith.

- The Commencement Certificate for Wing C has been received on 08.09.2006 however, the construction work has not yet

started. The copy of WIP A/c for F.Y. 2016-17 has been attached herewith.”

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.....

“(8) The details of Inventory held in stock as on 01.04.2016 and as on 31.03.2017 have been attached in point no. 1(v) above.

(9) After project is completed, unsold area is valued at cost or market value whichever is lower and when unsold stock is sold, sale is booked in said year and profit is declared accordingly. The calculation of valuation of closing stock of Wing B project has been attached in point no. 1(v) above.

(10) Reconciliation of opening & closing stock along with additions made and sales made has been attached in point no. 1(v) above.”

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.....

“(16) Regarding your Honor's query relating to reconciliation of turnover in service tax return & ITR, we would like to state as under:

a. Under Service Tax Rules, service tax is chargeable even on "advances against booking" from the purchaser, who has booked office in Project undertaken by the assessee-firm. However, under Income tax Act, income is chargeable to Tax on basis of Method of Accounting followed by assessee-firm.

b. As mentioned in point 1 above, the assessee-firm is following Percentage of Work Completed Method (WIP Method) to declare profit from Project. The advance received from customers till the O.C. is received is shown as "advances against booking" under Current Liabilities in balance sheet and on completion of the project, sales are declared by the assessee-firm.

c. In view of above fact, there is mismatch in turnover shown under service tax return and ITR for F.Y. 2016-17. The copy of service tax returns for F.Y. 2016-17 along with reconciliation of gross income received from services shown under Service Tax Return and Income Tax return for F.Y. 2016-17 have been attached herewith also stating the reasons for difference.”

12. The Ld. A.R. for the assessee further taken us through the working of closing stock as on 31/3/2017 for the year under consideration regarding wing B project available at page 44 which is as under:

M/S CORONATE CONSTRUCTIONS			
Asst. year 2017-18			
<u>WING B PROJECT</u>			
Working of closing stock as on 31.03.2017			
A	Calculation of stock value as on 31.03.2015		
	Land cost	186,275,180	
	Finance cost	42,921,508	
	Construction cost	335,624,400	
	Indirect cost (Admin & selling expenses)	14,339,496	
		579,160,584	
	Add : Gross profit booked till 31.03.2015	8,218,025	
		587,378,610	
	Less : Sale booked till 31.03.2015	(445,538,526)	141,840,083
B	Unsold area as on 31.03.2015	sq. ft.	23336.00
C	Cost per sq.ft. [A/B]		6078.17
D	Unsold area as on 31.03.2017	sq. ft.	6,200
E	Closing stock value as on 31.03.2017 (C*D)		37,684,630

13. Thereafter Ld. A.R. for the assessee further contended that vide further notice under section 142(1) dated 12.10.2019 the AO called details of all projects/wings in the form of date of commencement, date of completion, number of units, flat constructed along with supporting proof and also to furnish a statement giving details of units/flats sold wing-wise in the given format. In response to the aforesaid queries assessee filed submissions dated 11/11/2019 by duly explaining the queries as under:

“1. The details of project undertaken by assessee-firm along with copy of Commencement Certificate and Occupancy certificate are attached herewith for your Honor's verification.

2. We are herewith attaching the statement reflecting units (office) sold in the format as specified by your Honor.

3. We are herewith attaching the statement reflecting "Advances received against office booking" in the format as specified by your Honor.

4. The wing wise details of revenue recognition and offering of profit for A.Y. 2014-15 to A.Y. 2017-18 will be submitted in due course"

14. The assessee also brought on record copy of OC available at page 81 of the paper book and details of advances received upto 31/03/2017 available at page 84 of the paper book which is as under:

B WING ADVANCE RECEIVED UPTO 31.03.2017			
NAME	AREA	D.O.A.	AGREEMENT VALUE
Vijayalaxmi R.Shah	610	-	3,050,000
Santosh Poojari	658	-	
Mrs.ChetnaD.Mehta	658	-	2,682,000
Uday Bharat Shah & Bharat Jagjivandas Shah	496	-	2,800,000
Bharat Jagjivandas Shah & Uday B.Shah	550	-	3,100,000
Rohan Shah & Mr.RakeshG. Shah	705	-	3,927,500
Mr.Rakesh G.Shah & Mrs.Sonam R,Shah	610	-	3,710,000
Uday Bharat Shah	658	-	4,350,000
TOTAL			

15. In the light of the aforesaid argument the Ld. A.R. for the assessee further contended that the AO was fully aware of all the relevant facts and circumstances of the case, called for the entire details and after due verification, passed the assessment order and as such order passed under section 263 is bad in law and is liable to be quashed.

16. However, on the other hand, the Ld. D.R. for the Revenue in order to repel the arguments advanced by the Ld. A.R. for the assessee contended that the AO has not made any discussion whatsoever in the assessment order nor he has made any discussion as to the deemed rent and relied upon the decision rendered by Hon'ble Bombay High Court in case of Sane & Doshi Enterprises (High Court of Bombay) 58 taxmann.com 111, Gundecha Builders (High Court of Bombay) 102 taxmann.com 27 and order passed by coordinate bench of Tribunal in case of Inorbit Malls P. Ltd. in ITA No.2220/M/2021 order dated 11.10.22 and Dimple Enterprises 129 taxmann.com 66.

17. Before discussing the legality and validity of the impugned order passed under section 263 of the Act we would like to see the settled principle of law for exercising the jurisdiction under section 263 of the Act. Hon'ble Supreme Court of India in case of The Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) laid down that twin conditions are required to be satisfied before invoking the jurisdiction under section 263 of the Act which are:

1. That the order of AO must be erroneous and
2. As consequence of passing an erroneous order prejudice is caused to the interest of revenue.

18. It is further held that in the following circumstances the order of AO can be held to be erroneous:

- “(i) if the Assessing Officer's order was passed on assumption of incorrect facts; or assumption of incorrect law;*
- (ii) Assessing Officer's order is in violation of the principles of natural justice;*
- (iii) if the AO's order is passed by the without application of mind; or*
- (iv) if the AO has not investigated the issue before him.”*

19. Hon'ble Supreme Court in case of The Malabar Industrial Co. Ltd. (supra) further held that the phrase "prejudicial to the interest of revenue" has to be read in conjuncture with erroneous order passed by the AO. Hon'ble Supreme Court further held that in case AO adopts one of the courses permissible in law and it has resulted in loss to the Revenue and where two views are possible and the AO has taken one view with which the Ld. CIT(A) does not agree in that case the order cannot be treated as prejudicial to the interest of the revenue unless the view taken by the AO is unsustainable in law. The Ld. A.R. for the assessee further contended that in case of group concern namely Dhirajlal Amichand Shah the identical issue has been decided by the co-ordinate bench of the Tribunal in case of Dhirajlal Amichand Shah & others vs. PCIT in ITA No.997/M/2022 order dated 03.02.2023.

20. As discussed in the preceding paras the AO has called the complete details of unsold flats duly shown in the profit and loss account and balance sheet as on 31/03/2017 wherein closing stock of unsold flats is stock of 6200 square feet of the value of Rs.3,76,84,630/- in the profit and loss account available at page 1 to 3 of the paper book. In the balance sheet the assessee has also recorded the details of current assets in Wing A-work in progress account, Wing C-work in progress account, Wing B-closing stock account for Rs.3,76,84,630/-. This profit and loss account and balance sheet has been produced before the AO at the time of scrutiny proceedings in response to the notices issued under section 142(1) of the Act.

21. So when the assessee has filed the complete details vide its reply dated 28.12.2018 and available at page 31 to 32, reply dated 09.07.2019 along with relevant annexure available at page 38 to 71, reply dated 11.11.2019 filed by assessee dated 20.12.2019 along with relevant annexure available at 87 to 94 pursuant to the different notices issued under section 143(2) and 142(1) of the Act it is difficult to accept the contention raised by the Ld. D.R. for the Revenue that AO had not applied his mind. The assessee has also brought on record during assessment proceedings occupation certificate of flats dated 4.6.2013 which shows that out of 10 flats flagged by the Ld. PCIT, assessee has taken the advance in 8 flats and two flats were used for stocking raw material etc.

22. The Ld. A.R. for the assessee further contended that CBDT vide its circular No.02/2018 (F.No.370142/15/2017-TPL) has given explanatory notes to provisions of Finance Act, 2017 vide order dated 15.02.2018 as item No.17 and classifies the notional income in respect of house property as under:

“17.1 Section 23 of the Income-tax Act provides for the manner of determination of annual value of house property. 17.2 Considering the business exigencies in case of real estate developers, the said section has been amended to provide that where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil. 17.3 Applicability: This amendment takes effect from 1st April, 2018 and will, accordingly apply from assessment year 2018-19 and subsequent years.”

23. So the AO, after examining the complete details filed by the assessee, proceeded to decide the issue in question by following the CBDT circular No.2/2018 by framing the assessment by not

determining the national income from unsold flats held by the assessee as stock in trade.

24. So far as contention raised by Ld. D.R. for the Revenue that the AO has not passed speaking order by discussing the issue in question is concerned it is settled principle of law that when order is neither erroneous nor prejudicial to the interest of the revenue it does not affect its validity if detailed discussion has not been made in the order. No doubt no discussion has been made by the AO regarding deemed rent on unsold flats but when legally deemed rent pertaining to unsold flats which are shown in stock in trade is not to be assessed under the head "income from house property" by notionally computing annual letting value from such property non discussion by the AO in detail does not confer the jurisdiction on the Ld. PCIT to invoke the provisions contained under section 263 of the Act. So the decisions relied upon by the Ld. D.R. for the Revenue are not applicable to the facts and circumstances of the case.

25. In view of what has been discussed above we are of the considered view that the AO has duly conducted the investigation by examining the detail facts regarding the unsold flats which was held as stock in trade by not determining ALV by following the guidelines given in the CBDT circular No.2/2018 dated 15.02.2018 (supra). Moreover Hon'ble Supreme Court in case of Chennai Properties & Investments Ltd. vs CIT 373 ITR 673 held that unsold flats which are in stock in trade should be assessed under the head "business income" and there is no justification in estimating the rental value from those flats and notionally computing annual

letting value under section 263 of the Act. Therefore invoking the jurisdiction under section 263 of the Act by Ld. PCIT is not sustainable in the eyes of law, hence impugned order passed under section 263 is ordered to be set aside.

26. Resultantly the appeal filed by the assessee is allowed.

Order pronounced in the open court on 09.11.2023.

**Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 09.11.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.