



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.207/CTK/2018

Assessment Year: 2013-14

| | | |
|--|-----|------------------------|
| Surekha Builders & Developers Pvt Ltd., Plot No.47/A, Sahid Nagar, Ground floor, Bhubaneswar. | Vs. | Pr. CIT-1, Bhubaneswar |
| PAN/GIR No.AAICS 5651 G | | |
| (Appellant) | .. | (Respondent) |

Assessee by : Shri S.K.Agarwal, AR
Revenue by : Shri M.K.Gautam, CIT,DR

Date of Hearing : 16 /07/ 2020

Date of Pronouncement : 17 /07/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the assessee against the order u/s 263 of the Act (hereinafter for short 'The Act') of the CIT-1, Bhubaneswar dated 27.3.2018 for the assessment year 2013-14.

2. The assessee has raised the following grounds in its appeal:

" 1. That, the order of the Ld. Principal Commissioner of Income Tax-1, Bhubaneswar passed u/s 263 of the Act setting aside the original assessment made u/s 143(3) and directing denovo assessment is arbitrary in view of the fact that the original order was neither erroneous nor prejudicial to the interest of revenue.

2. That, Ld. Principal Commissioner of Income Tax-1 failed to appreciate that the appellant has been consistently following the

percentage completion method of accounting in recognizing the revenue in accordance with AS-7 as prescribed by the Institute of Chartered Accountants of India (ICAI) which is clearly stated in the audited financial statements and hence the directions made in the order passed under Section 263 are bad in law.

3. That the observations of Ld. Principal Commissioner of Income Tax-1 that profit element could not be established for want of project report are based on incorrect appreciation of material on record as all the relevant details have been verified by the Ld Assessing Officer at the time of assessment proceedings. Directions issued for fresh assessment are nothing but change of opinion which is not permissible under the proceedings initiated u/s 263, therefore the order passed u/s 263 is illegal and void ab-initio..

4. That the relevant project completion and revenue recognitions are duly verified by the AO at the time of assessment proceedings. Hence, a mere assumptions that revenue has been under estimated on Surekha Vatika Project basing upon assumed figures and forming a change of opinion on that basis is contrary to law and hence, bad in law and hence, the order passed u/s.263 of the Act is liable to be set aside.”

5. For that the order received u/s.263 on 17.4.2018 is barred by limitation and hence liable to be quashed.”

3. Facts in brief are that the assessee is a builder developing of house projects. In the assessment year under consideration, the assessee was developing three projects namely; 1) Surekha Regency, 2) Surekha Vatika and 3) The Emralad. The assessee is following ‘percentage completion method of accounting’ and recognizing the revenue as per AS-7. The assessee filed the return of income for the year under consideration declaring a total income of Rs.49,27,330/- on 27.9.2013. The Assessing Officer framed assessment u/s.143(3) of the Act enhancing the income the

income at Rs.56,02,560/- raising a demand of Rs.2,93,580/- vide order dated 17.3.2016.

4. Later on, the Ld Pr. CIT, on verification of assessment record, noticed that the assessee has recognized revenue to the extent of Rs.16,23,26,410/- on account of sales of flats from three project i.e. Rs.2,13,59,482/- - Surekha Regency, Rs.12,04,63,062/- - Surekha Vatika and Rs.2,05,03,866/- . The Emerald. He further noticed that the revenues amounting to Rs.3,51,44,682/- and Rs.86,80,000/- were booked against Surekha Regency and the Emerald respectively in the financial year 2011-12. Thus, revenue of Rs.12,04,63,062/- from Surekha Vatika was recognized only in financial year 2012-13. But revenue of at least Rs.15,49,95,140/- (being 29% of estimated project cost of Rs.53,44,66,000/-). He was of the opinion that the due to non-availability of project report, profit element could not be accounted for, which should have been recognized in the financial year 2012-13. Therefore, an amount of Rs.3,45,32,078/- (Rs.15,49,95,140 – Rs.12,04,63,062/-) was less recognized as revenue by the AO erroneously. In view of above, Id Pr. CIT issued show cause notice u/s.263(1) of the Act dated 15.3.2018 to the assessee. In compliance, the assessee submitted the required documents and clarifications. However, Id Pr. CIT opined that the assessee has not followed proper method leading to incorrect revenue recognition for Surekha Vatika Project. Accordingly, Lr. Pr. CIT observed that complete and

proper verification to recognize the revenue was not done at the time of assessment u/s.143(3) of the Act and, therefore, he set aside the assessment and direct the AO to redo the assessment denovo on this issue after giving the assessee reasonable opportunity of hearing to the assessee.

5. Aggrieved by the order of the Id Pr. CIT u/s.263, the assessee is in appeal before us.

6. Ld A.R. of the assessee submitted that the assessment order passed by the AO u/s.143(3) is neither erroneous nor prejudicial to the interest of the revenue. He submitted that at the time of original proceedings of assessment, the AO requisitioned the details of project was percentage completion, details of revenue recognised of each project, cost of the project, closing stock detail and its valuation, etc. Ld counsel also submitted that the Assessing Officer during scrutiny assessment proceedings u/s.143(3) of the Act, issued notice u/s.142(1) alongwith questionnaire on 30.7.2015 and 26.10.2015 (copy of which is placed at APB 43-46), which was replied by the assessee vide reply dated 24.12.2015 (copy placed at pages 52-56 of APB). Ld counsel submitted that the issuance of notice by the AO and reply filed by the assessee alongwith relevant documents and details clearly shows that the AO, during scrutiny assessment proceedings, has raised a query to the assessee regarding revenue recognition method adopted by it on all projects including Surekha Vatika project and the same was properly replied by the assessee

submitting all the relevant details and documents alongwith written submissions.

7. Further, Id counsel submitted that the assessee during the course of assessment proceedings, the assessee also submitted assessment orders for assessment year 2012-13 dated 3.2.2015, wherein, no addition has been made by the AO disputing the revenue recognition method adopted by the assessee. Further, Id counsel also submitted that from the copy of the scrutiny assessment order dated 22.8.2017 passed for assessment year 2015-16 also shows that even during subsequent assessment order, the department has not disputed the revenue recognition method consistently followed and accepted by the department and the same pattern of revenue recognition has been followed by the assessee during present assessment year 2013-14 and rule of consistency has to be followed and respected by the revenue department before disturbing any assessment orders either under revisional proceedings under section 263 of the Act or initiation of reassessment proceedings u/s.147 of the Act.

8. Further, Id A.R. drew our attention towards statement of profit and loss account for year ended 31.3.2013 (APB-20) r.w. project-wise revenue recognition statement (APB-87) and submitted that the assessee is operating three projects i.e. Surekha Vatika, The Emerald and Surekha Regency but the Pr. CIT in the notice u/s.263 of the Act and in order under section 263 of the Act has only disputed the revenue recognition method

pertaining to Surekha Vatika project and revenue recognition of other two projects i.e. The Emerlad and Surekha Regency has not been disputed or disturbed in any manner. Ld A.R. strenuously submitted that as per project-wise revenue recognition statement for financial year 2012-13 pertaining to assessment year 2013-14, the assessee has recognised or shown revenue of Rs.16,23,26,410.86 including revenue recognition for Vatika Projects of Rs.12,04,63,062.30. Ld A.R further submitted that the main issue raised and agitated by Pr. CIT in the impugned revisional order is that the assessee is following percentage completion method (PCM) for accounting for recognition of revenue but the revenue recognition for which Surekha Vatika project, proper method has not been applied by the assessee leading to incorrect revenue recognition of Rs.12,04,63,062 in stead of proper method which recognised the revenue at Rs.15,15,49,95,104 (estimated project cost x percentage completion of project). Ld A.R. vehemently pointed out that as per Architect Report available at page 92 of APB, it is clear that percentage of Surekha Vatika Project was 29% as on 31.3.2013 i.e. at the end of financial year 2012-13 relevant to assessment year 2013-14. Ld counsel further submitted that Pr. CIT has only considered the amount of revenue recognition and shown by the assessee at Vatika Project and by applying 29% to the total project cost and he alleged that revenue recognition has not been properly done by the assessee but these findings are not factually correct because the estimated

project cost of Surekha Vatika is Rs.53,44,66,000/- and out of the said project 29% was completed as on 31.3.2013 and 61% of year was booked by the assessee. Therefore, the assessee recognised revenue of Rs.12,04,63,062/- which is 29% of 61% of project cost i.e. 29% of booked area of 61% and besides this, the assessee has also shown work in progress (WIP) for Surekha Vatika Project at Rs.6,04,48,098.66 (APB 26 r.w. 87). Therefore, total amount of revenue recognition by the assessee is not only Rs.12,04,63,062/- but the amount of work in progress pertaining to Vatika Project has also to be considered and total revenue recognition by the assessee for Surekha Vatika Project comes to more than Rs.18,09,11,160.96 which is much higher than the revenue Rs.15,49,95,140/- as estimated by Pr. CIT in last part of the impugned revisional order. Ld A.R. submitted that when the assessee has recognised revenue from Surekha Vatika Project more than the amount as per calculation given by the Pr. CIT, then the assessment cannot be termed as erroneous and prejudicial to the interest of the revenue. Ld A.R. finally prayed and submitted that since the assessee is consistently following percentage completion method of revenue recognition, which was consistently accepted by the department, therefore, the revenue recognition method followed by the assessee approved by the statutory auditor cannot be disputed or disbelieved for invoking the provisions of section 263 of the Act. Ld A.R. has placed reliance on the following judgments:

- i) CIT vs Reita Biscuits Co.(P) Ltd., 309 ITR 154 (P&H)
- ii) DIT vs Jyoti Foundation, 357 ITR 388 (Del)
- iii) Nanda Kishore Agarwalla vs Pr. CIT in ITA No.212/CTK/2017
- iv) Pr. CIT vs Kessoram Industries Ltd., 105 CCH 99 (kol)
- v) ITO vs DG Housing Projects , 343 ITR 329(Del)

9. Replying to above, Id CIT DR submitted that the Assessing Officer has not made any enquiry, verification or any other exercise to examine the justification and correctness of the revenue recognition method & calculation adopted by the assessee for Surekha Vatika project. Therefore, Id Pr. CIT was right in alleging the impugned assessment order as erroneous and prejudicial to the interest of the revenue. Id CIT DR placed reliance on the decision of Hon'ble Gauhati High Court in the case of CIT vs. Jawahar Bhattacharjee reported in 342 ITR 74 (Gau) and submitted that where there was non-application of mind by the AO on the issue then the order has to be held as erroneous and prejudicial to the interest of the revenue.

10. Placing rejoinder to above, Id A.R. submitted that the Assessing Officer has made proper, sufficient and adequate enquiries by way of issuance of two notices u/s.142(1) of the Act alongwith questionnaire which were properly replied by the assessee. He vehemently pointed out that the PCM has been consistently followed by the assessee and being consistently accepted by the revenue without any dispute for the revenue recognition of all the projects. By following percentage completion method

(PCM) and the amount of revenue recognised by the assessee for Surekha Vatika Project including work in progress of said project comes to more than the amount of revenue estimated by Pr. CIT. Therefore, the impugned order cannot be held as erroneous and prejudicial to the interest of the revenue. Ld counsel also submitted that not only for Surekha Vatika Project but the assessee has also recognised revenue for The Emerald project, which has also been noted by Pr. CIT in the first page of the impugned order u/s.263 of the Act, wherein, the estimated project cost was of Rs.6,05,72,400/- of which 47% of project was completed as on 31.3.2013 and 70% of said project was booked by the customers by the assessee and the assessee recognised revenue of Rs.2,05,03,866.04 as per 70% of the 47% viz; percentage of completion multiplied by percentage of booking of total project cost, which is clearly discernible from the project wise revenue recognition statement (APB 81) and project wise work in progress (APB-87) and if these statements are cogently taken then it is ample clear that the assessee has shown revenue of Emerald project at Rs.2,05,03,866.04 which is 70% of 47% project cost and this estimation has not been disputed by Pr.CIT in any manner and disputing the same method for Surekha Vatika is not reasonable and justified. Therefore, the impugned order u/s.263 may kindly be quashed.

11. On careful consideration of the rival submissions, first of all, from the copy of the notice u/s.263 of the Act and impugned revisional order passed

by the Ld. Pr. CIT u/s.263 of the Act under challenge, we clearly observe that the sole issue picked up by Id Pr. CIT is that the assessee company is following percentage completion method of accounting for revenue recognition but while considering the revenue recognition of the Surekha Vatika Project, proper method was not applied by the assessee leading to incorrect revenue recognition of Rs.12,04,63,062/- instead of the proper method which recognizes the revenue at Rs.15,49,95,140/- i.e. (estimated project cost x percentage of completion of the project) = Rs.53,44,66,000 x 29%. From the said notice as well as the impugned order, it is also not in dispute that the assessee is following percentage completion method and in response to notice u/s.263 of the Act and during proceedings u/s. 263 of the Act before the Pr. CIT, the assessee submitted explanation justifying its revenue recognition method for Surekha Vatika Project, which has also been reproduced by Id Pr. CIT in para 4 of the impugned revisional order. For the sake of completeness, we find it appropriate to reproduce the explanation submission of the assessee before Id Pr. CIT, which read as follows:

“(i) During the relevant assessment year, the revenue on projects, were accounted for on the basis of percentage completion method of accounting which was regularly followed by it.

(ii) The Assessee has disclosed the Percentage completion of all the three projects vide letter dated: 24/12/2015 at the time of hearing (Photo copy enclosed-"Annexure A").

(iii) The revenue of Rs. 12,04,63,062/- was accounted during the assessment year for Surekha Vatika and duly offered to tax. The revenue

was recognized as per the percentage completion method of accounting. As per the certificate of progress completion the project was 29% completed as at 31/03/2013. The assessee had received 61% of the customer booking as at 31/03/2013. Thus, as per the method consistently followed by the assessee, the revenue of Rs. 12,04,63,062/- was recognized, the computation is as under:-

| | |
|---|----------------|
| (a) Total Estimated revenue (Sales Value) | 68,09,67,000/- |
| (b)% of completion | 29% |
| (c)% of Booking Area as at 31/03/2013 | 61% |
| (d) Revenue Recognized [(a)*(b)*(c)] | 12,04,63,062/- |

(iv) The Balance of 29% of 39% (i.e. unsold area representing Work in Progress) duly reflected as WIP in the Profit and Loss Account. During the year under review WIP from Surekha Vatika project was Rs. 6,04,48,099/-. (WIP sheet enclosed under "Annexure B")

(v) In the show cause notice, your authority has computed the revenue from the Surekha Vatika Project at flat 29% which represents the completion percentage as at 31/03/2013 without considering the booking area sold as at 31/03/2013 which was 61% of the total area and also ignored the Work in Progress out of that. The assessee humbly pleads **that** if the area sold/booked is not taken into consideration, the matching of proportionate costs to revenue recognized cannot be done which is the principle of the percentage completion method of accounting,

(vi) Thus, the assessee humbly pleads that the order passed under Section 143(3) of the Act dated 17/03/2016 is not erroneous as the Ld Assessing Officer has accepted the method of accounting regularly employed in recognizing revenue,

(vii) The assessee further pleads that the order passed u/s 143(3) dated 17/03/2016 is also not prejudicial to the interest of revenue as there is no revenue loss to the Department, In the subsequent assessment years the assessee has duly recognized the revenue from Surekha Vatika on the same method & principle of accounting and the revenue as and when accrued from the Project been offered to tax. The details of the revenue recognized in different assessment years from Surekha Vatika is as per **Annexure C** is enclosed for your kind reference,

(viii) A bare perusal of Annexure C clearly shows that the required revenue from the Surekha Vatika has been offered to tax on the consistent method of accounting regularly followed by the assessee. It is humbly pleaded that when all the revenue has been duly recognized over the period of the project on a consistent method, the order passed U/s 143(3) dated 17/03/2016 cannot be presumed to be prejudicial to the interest of revenue."

12. On consideration of the allegation and point agitated by Pr. CIT and explanation of the assessee, we also note that at the end of financial period on 31.3.2013, the Surekha Vatika Project was completed to the extent of 29%, which is also discernible from the certificate issued by Architect (APB - 92), which certify that 29% of the project i.e. Surekha Vatika Project has been completed as on 31.3.2013. The Pr. CIT has also not disputed this fact that the assessee has booked 61% of total project area till end of financial year 2012-13 against which the assessee received estimated and recognised sales revenue of Rs.12,04,63,062/- by taking 61% of 29% of estimated project cost of Rs.53,44,66,000/- as noted by Ld. Pr. CIT in para 3 of the impugned order. From the explanation submitted before the Id. Pr. CIT (supra) and from the copy of the statement showing project wise work in progress (APB-87), statement of revenue recognition (APB 081) it is also clearly discernible that in addition to revenue recognition of Rs.1,204,63,062.30 the assessee has also shown work in progress of Rs.6,04,44,098.66, on Surekha Vatika Project, which has also been shown in the credit side of balance sheet and should have been included in the revenue recognition by the assessee of Surekha Vatika Project.

13. Therefore, we are in agreement with the contention of Id A.R. that Ld. Pr. CIT in revising the impugned assessment order alleges that the revenue Surekha Vatika Project should have been recognised at

Rs.15,49,95,140/- whereas the assessee has already recognised revenue much higher than the amount of Rs.18,09,11,160/- (Rs.12,04,63,062 + Rs.6,04,48,098). Therefore, it is clearly discernible that the assessee has recognised revenue of Surekha Vatika Project at very higher side in comparison to the estimate made by Pr. CIT for alleging the assessment order as erroneous and prejudicial to the interest of the revenue. At the same time, we may also point out that in para 3 of the impugned order, Pr. CIT has taken up three projects viz; Surekha Vatika project, The Emerald and Surekha Regency Project but Pr. CIT has only disputed the method of revenue recognition adopted by the assessee for Surekha Regency Project. He noted the estimated project cost and percentage of completion of Surekha Vatika project and The Emerald and from the calculation placed by the assessee and also noted by the Id. Pr. CIT in para 3 for revenue recognition and work in progress, it is clearly discernible that the assessee has adopted methodology for revenue recognition for both the projects as per percentage completion method but the Id. Pr. CIT has only disputed the revenue recognition of Surekha Vatika project, leaving aside the Emerald Project for which the assessee also recognises revenue by following the same calculation, pattern and methodology. We are unable to understand the logic behind this pick and choose action of the Id. Pr. CIT.

14. For revising the assessment order or reassessment order under section 263 of the Act, the revisional authority i.e. Pr. CIT is required to hold the assessment order and reassessment order as erroneous and prejudicial to the interest of the revenue. In view of facts noted by us in the earlier part of this order, it is clearly discernible that the assessee has recognised revenue towards Surekha Vatika Project at much higher side in comparison to estimate made by Pr. CIT in the impugned order. Therefore, on this count, the impugned assessment order cannot be held as erroneous and prejudicial to the interest of the revenue.

15. It is well settled principle that the Assessing Officer is required to make reasonable, sufficient and adequate enquiry of impugned issues during assessment proceedings and in case of no enquiry or insufficient or inadequate enquiry, Pr.CIT is empowered to revise the order holding the same as erroneous and prejudicial to the interest of the revenue. But if this proposition is evaluated in the facts and circumstances of the present case then, it is clearly discernible that the AO by way of notice u/s.142(1) dated 26.10.2015 and 30.7.2015 called the documents/information from the assessee which includes copy of the audited balance sheet, profit and loss account, Annual report alongwith details of bank accounts maintained including bank name, branch details and a/c no. supported with bank statements for the financial year 2012-13 relevant to assessment year

2013-14. From the above, we also observe that the Assessing Officer also called the details of party-wise purchase and sales of land/flat, details of project-wise percentage of construction as on 31.3.2013, estimate cost of each projects and estimate sales price thereof and closing stock details with detail valuation and method of valuation, which were submitted by the assessee and this fact has not been negated or disputed by Pr. CIT in the impugned order as well as during the arguments before us by Ld. CIT DR.

16. In view of copies of notices and replies of the assessee available at APB page 43 to 51, we are satisfied that during assessment proceedings, the AO made proper, sufficient and adequate enquiry on the issues including issue of revenue recognition of the assessee by following percentage completion method, project-wise revenue recognition. Therefore, it is not a case of no enquiry, inadequate enquiry or insufficient enquiry. Therefore, without holding so, the impugned assessment order cannot be tagged or alleged as erroneous and prejudicial to the interest of revenue.

17. In the case of Reita Biscuits Co.(P) Ltd (supra), Hon'ble P&H High Court has held that once the issue on the merits has been decided against the revenue then there is no need to take a different view on a technical reason and revision of assessment order u/s.263 of the Act is not valid.

18. Further in the case of Jyoti Foundation (supra), Their Lordships of Hon'ble Delhi High Court has held as under:

" In the present case, inquiries are certainly conducted by the AO. It is not a case of no inquiry. Vide order under section 263 itself records that the Director felt that the inquiries are not sufficient and further inquiries or details should have been called. However, in such cases, as observed in the case of DG Housing Project Limited (supra), the inquiry should have been conducted by the Commissioner or Director himself to record the finding that the assessment order was erroneous. He should not have set aside the order and directed the AO to conduct the said inquiry."

19. Further more in the case of Kessoram Industries Ltd (supra), Hon'ble Calcutta High Court has held that the Commissioner could exercise his jurisdiction u/s.263 of the Act only in cases where no enquiry was made by the Assessing Officer and we have noted above that in the present case the AO has made adequate and sufficient inquiries on the issue of project wise revenue recognition by the assessee.

20. The Id. Pr. CIT has placed vehement reliance and the decision of Hon'ble High Court of Gauhati in the case of Jawahar Bhattacharjee (supra). In this case, the AO allowed exemption u/s.54F of the At to the assessee without holding any enquiries and without application of mind to the relevant material. But in the present case, the AO has made an adequate and sufficient enquires on the assessee of revenue recognition method adopted by the assessee which is quite correct and proper. As we have noted above that the revenue recognition by the assessee for Surekha

Vatika Project is more than the estimate made by the Ld Pr. CIT, therefore, the benefit of the proposition laid down by the Hon'ble High Court of Gauhati is not available for the revenue in the present case having distinct & distinguishable facts and circumstances.

21. On the basis of foregoing discussion, we have no hesitation to hold that the Assessing Officer made sufficient and adequate enquiries on the issue of project-wise revenue recognition by the assessee by calling relevant audit report and other supporting documents and on logical analysis of facts emerged from the audit report and project wise revenue recognition by the assessee, we are unable to see any valid reason to dispute the methodology adopted by the assessee for recognition of revenue of Surekha Vatika Project because if the revenue recognised by the assessee and work in progress shown by the assessee towards Surekha Vatika project is taken then the revenue recognised by the assessee on this project is much higher than the estimate made by the Pr. CIT in the impugned revisional order.

22. From a careful reading of the impugned order, we also observe that the Pr. CIT has not made any inquiries or exercise himself before alleging the assessment order as erroneous and prejudicial to the interest of the revenue. As principle rendered by Hon'ble Delhi High Court in the case of Jyoti Foundation (supra), it is ample clear that the assessment order which

had been passed after proper inquiry/investigation on the question are per se clearly treated as erroneous and prejudicial to the interest of revenue because the revenue authorities failed to show that further inquiry/investigation was required or further scrutiny should be undertaken. The methodology adopted by the assessee for revenue recognition was being consistently followed by the assessee during previous and subsequent assessment years and same cannot be tinkered or disturbed by placing new method of revenue recognition wherein work in progress shown by the assessee has not been taken into consideration. In such type of case, inquiry should have been conducted by the revisional authority himself to record the finding that the assessment order was erroneous.

23. In the present case, the Pr. CIT has not made inquiry himself on the submission/reply of the assessee to before exercising his power u/s.263 of the Act vide dated 23.3.2018 (APB pages 59 to 68) and relevant part as reproduced by the Id Pr. CIT in para 4 of the impugned order. He merely set aside the assessment order and directed the AO to redo the assessment denovo on the issue, which is not permissible as per principle laid down by Hon'ble Delhi High Court in the cases of Jyoti Foundation (supra) and DG Housing (supra).

24. The Id AR in his submission relied upon the views expressed in the case of DG Housing Project (supra) wherein, Their Lordships of Hon'ble Delhi High Court held thus:

"Thus, in cases of wrong opinion or finding on the merits, the Commissioner of Income-tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under [section 263](#) is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. The Commissioner of Income-tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the Commissioner of Income-tax must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the Commissioner of Income-tax and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in law. In some cases possibly though rarely, the Commissioner of Income-tax can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing Officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under [section 263](#) of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the Commissioner of Income-tax has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question."

25. In view of foregoing discussion, we reach to a logical conclusion that the issuance of notice u/s.263(1) of the Act and impugned revisional order u/s.263 of the Act is not sustainable and revisionary authority had no valid

jurisdiction to revise the assessment order. Consequently, the impugned notice as well as revisional order u/s.263 of the Act are hereby dismissed.

26. In the result, appeal of the assessee is allowed.

Order pronounced on 17/07/2020.

Sd/-

sd/-

(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 17/07/2020

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Surekha Builders & Developers
Pvt Ltd., Plot No.47/A, Sahid Nagar, Ground floor,
Bhubaneswar
2. The Respondent. Pr. CIT-1, Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. DR, ITAT, Cuttack
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack