

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AGRA (DB) BENCH, AGRA**

**BEFORE: SHRI M BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 263/Agr/2025 & SA No 02/Agr/2025  
Assessment Year: 2010-11**

Ajit Singh, Village- Haatodh, Post-Kota, Shivpuri, M.P-473551	<b>Vs.</b>	PCIT, Aayakar Bhawan, City Center, Gwalior-474001
<b>PAN : CCNPS7470K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Vipin Upadhyay, Adv
Department by	Shri Sukesh Kumar Jain, CIT. DR

Date of hearing	19.01.2026
Date of pronouncement	17.04.2026

**ORDER**

**PER: SUNIL KUMAR SINGH, JM.**

**ITA No 263/Agr/2025**

This appeal has been preferred against the impugned order dated 18.03.2025 passed by Id PCIT, Gwalior in revision No PCIT,Gwalior/Revision-263/100000613485/2023 in exercise of his power u/s. 263 of the Income Tax Act(hereinafter referred to as the Act), wherein Id PCIT has held that the assessment order dated 22.12.2017 passed u/s. 143(3)/147 of the Act, is erroneous & prejudicial to the interest of the revenue and directed the assessing officer to conduct appropriate enquiries in respect of the nature and source of the amount deposited in cash in assessee's bank account and pass order a fresh after affording an opportunity of hearing to the assessee.

2. This is second round of litigation. The background in brief is that assessee is a non-filer. His case was reopened u/s. 147 of the Act for A.Y. 2010-11 on account of cash deposit of more than Rs. 10,00,000/- (i.e. Rs. 90,15,000/-) in assessee's bank account during the F.Y. 2009-10. Notice u/s. 148 of the Act dated 29.03.2017 was issued and served upon the assessee. Assessee filed return of income in response thereof, declaring income at Rs. 1,50,420/- and agricultural income of Rs. 9,75,240/-. Assessment proceedings were completed u/s. 143(3) r.w.s 147 of the Act, accepting the returned income vide assessment order dated 22.12.2017.

3. Ld PCIT, while exercising revisional powers vested in him u/s. 263 of the Act, passed original revisional order dated 26.03.2020 and observed that assessee had taken advance of Rs. 77,73,275/- against the sale of land on behalf of assessee's sons Amir Singh & Shabeer Singh from four persons namely Shri Rajeev Sharma, Shri Satendra Singh Sengar, Shri Naresh Singh Parmar and Shri Devi Pratap Singh Chauhan. Ld PCIT further observed that the assessee also deposited the sale profits of his agriculture crops of approximately 12,00,000/-. Ld PCIT made observation that the assessee did not have any legal authority to accept the cash advance of Rs. 77,73,275/- on behalf of his two sons from the purchase of the property held in assessee's son's names. Ld PCIT, proceeded to observe that no evidence like formerly executed sale agreement or power

of attorney etc to collect advance on behalf of assessee's son was made available during the assessment proceedings. He further observed that the power of attorney was executed on 07.10.2014 and disbelieved the assessee's statements of acting on the basis of verbal sale agreement with his two sons. Ld PCIT, thus observed that the said cash deposit remained unexplained, holding the assessment order dated 22.12.2017 as erroneous and prejudicial to the interest of the revenue and directed the A.O to satisfy about the nature and source of the amounts aggregating to Rs. 77,73,275/- deposited in cash, in assessee's bank account and to pass assessment order de novo.

4. The consequential assessment order dated 13.09.2021 was passed making an addition of Rs. 82,30,000/- u/s. 69A of the Act as unexplained. Assessee preferred first appeal against this reassessment order before Id CIT(A) who allowed assessee's appeal vide order dated 18.03.2024. Meantime, this tribunal, vide order dated 20.09.2023, passed in ITA No 43/Agr/2020 (A.Y. 2010-11), set aside the original revisional order dated 26.03.2020 passed u/s. 263 of the Act and remitted the matter back to the file of Id PCIT for passing order a fresh after providing appropriate opportunity of hearing to the assessee. Ld PCIT, after providing opportunity of hearing to the assessee passed the impugned order dated 18.03.2025, which is under challenge in the present appeal.

5. Appellant assessee has raised the following grounds under appeal:

“Ground 1 - The PCIT has gone beyond its jurisdiction and has made observations on the merits of the case

1.1 The Appellant submits that the PCIT under Section 263 was only required to see whether the Assessment order dated 22.12.2017 passed by the Ld. ITO was erroneous and prejudicial to the interest of revenue. However, in the present case, the PCIT has made observations on the merits of the case, and this is not permissible. These observations will now be used by the Ld. ITO against the Appellant in the assessment proceedings, defeating whole purpose of de-novo adjudication.

1.2 The PCIT, in the garb of providing reasons for invoking its revisionary jurisdiction, has stepped into the shoes of the Adjudicating authority and made observations on the merits of the case.

Therefore, the Impugned Order is liable to be set aside on this ground alone.

Ground 2 - Assessment order dated 22.12.2017 was neither erroneous nor prejudicial to the interest of revenue

2.1 The Appellant submits that the PCIT erred in holding that the assessment order dated 22.12.2017 passed by the Ld. ITO was erroneous and prejudicial to the interest of revenue.

2.2 The PCIT alleged that the Ld. ITO did not make proper inquiries or verification regarding the source and nature of the cash advances of Rs. 77,73,275/-

2.3 This allegation is baseless and factually incorrect. The Ld. ITO, while passing the assessment order dated 22.12.2017, duly considered the issue. The Ld. ITO conducted multiple inquiries and verified the claim.

2.4 Specifically, the Ld. ITO recorded the statements of the buyers of the agricultural land (Shri Naresh Singh Parmar and Shri Satendra Singh Sengar) on oath to verify the Appellant's claim about receiving advances on behalf of his sons. The Ld. ITO also noted that the Appellant had submitted proofs including Mandi receipts, Khasra Khatauni copies, and copies of registries of land sold.

2.5 The Ld. ITO applied his mind and took a plausible view based on the inquiries and evidence available on record.

2.6 It is a settled legal position, as held by various courts, that where the AO has made inquiries and taken one of the possible views, the order cannot be considered erroneous or prejudicial to the revenue merely because the Commissioner holds a different view or desires a more elaborate discussion. Section 263 cannot be invoked for a mere difference of opinion or to start a fishing and roving inquiry.

2.7 The PCIT's conclusion that the AO made a "perfunctory reference (non-enquiry)" or showed "complete non-application of mind" is contrary to the record and based on a disagreement with the depth or nature of the inquiry conducted, which does not render the order erroneous or prejudicial when inquiries were demonstrably made.

Therefore, the Impugned Order is liable to be set aside on this ground alone.

Ground 3-The PCIT has wrongly questioned the genuineness of the amount received as an advance on behalf of the sons for the sale of Agricultural Land:

3.1 The Appellant submits that the amount of Rs. 77,73,275/- was genuinely received as advance payment on behalf of his sons, Shri Amir Singh and Shri Shabeer Singh, for the sale of their rural agricultural land.

3.2 The Appellant was verbally authorized by his sons to accept these amounts, as they were residing outside India/Shivpuri at the time. Verbal authority is valid under Section 187 of the Indian Contract Act, 1872.

3.3 Subsequently, the sons provided written authorization in the form of a Power of Attorney. While the PCIT refers to a POA of 2014 being after the advances, the Appellant's reply also refers to a POA dated 09.02.2011. Regardless of the specific date of the formal POA, the verbal authorization was in place at the time of receiving the advance.

3.4 The sons have provided written statements and affidavits confirming that they had verbally authorized the Appellant to receive the advance on their behalf in FY 2009-10.

3.5 The fact that the amounts were advances for the sale of agricultural land was recorded by the Registration and Stamp authority when the final sale deeds were executed in June-July 2017 (pertaining to FY 2017-18).

3.6 The PCIT's doubt regarding the genuineness of the transaction solely based on the lack of a formal power of attorney at the time of receiving the advance and the gap between receiving the advance and the final sale is unwarranted and ignores the evidence presented during the assessment proceedings and in the Appellant's reply.

Ground 4-The PCTT's finding based on "human probability" is erroneous:

4.1 The Appellant submits that the PCIT erred in concluding that the facts of the case "do not accord with the human probability theory", citing the Apex Court case of Sumati Dayal v CIT.

4.2 The PCIT's conclusion is based on the assumptions that a purchaser would not pay a large cash advance without formal documentation or a POA, and that depositing the amount in the father's account instead of the sons' is improbable.

4.3 However, the circumstances explained by the Appellant (sons residing away, reliance on verbal authority in family matters, the nature of rural land transactions, subsequent formal documentation, and the recording of the advance in the sale deeds) provide a plausible explanation for the sequence of events. The fact that the sale finally materialized and the advance was recorded in the official sale deeds strongly supports the Appellant's claim.

4.4 The Ld. ITO examined these facts, including obtaining statements from the buyers, and was satisfied. The PCIT's application of the human probability test is misplaced in light of the specific facts and evidence considered and accepted by the AO.

Ground 5- The PCIT erred in not considering that the amount pertains to the sale of agricultural land and therefore, is not taxable:

5.1 The Appellant submits that the amount of Rs. 77,73,275/-, being advance received for the sale of rural agricultural land, is not liable to be taxed under the provisions of the Income Tax Act, 1961.

5.2 The Act provides for the exemption of capital gains arising from the transfer of land used for agricultural purposes under Section 54B, subject to conditions. While Section 54B deals with capital gains, the very nature of the receipt as an advance for agricultural land sale places it outside the purview of taxable income in the hands of the Appellant, especially when the land belongs to his sons.

5.3 The PCIT's direction to the AO to potentially add this sum as unexplained money under Section 68 of the Act is incorrect and legally unsound. Section 68 applies to unexplained cash credits in

the books of account. The nature and source of this amount have been explained as an advance for land sale on behalf of sons, supported by evidence considered by the AO.

Ground 6-The PCIT erred in not considering that the amount, even if taxable, is taxable in the year of sale, not the year of advance receipt:

6.1 Without prejudice to the above grounds, the Appellant submits that even if any amount related to this transaction were to be considered taxable, it would only be the capital gain arising from the sale of agricultural land, and it would be taxable in the Assessment Year corresponding to the Financial Year when the actual sale deeds were executed, i.e., FY 2017-18 (AY 2018-19), not FY 2009-10 (AY 2010-11) when the advance was received.

Therefore, the invocation of Section 263 for AY 2010-11 on this issue is premature and without jurisdiction.

Ground 7-The PCTT erred in disregarding the order dated 18.03.2024 passed by the Ld. CIT(A)

7.1 Without prejudice to the above grounds, the Appellant submits that all the facts and circumstances of the present case were considered by the Ld. CIT(A) in a faceless appeal proceeding. Originally, an order under Section 263 was passed by the CTT on 26.03.2020, and thereafter, an assessment order was passed on 13.09.2021. This assessment order was challenged by the Appellant before the CIT(A) through the faceless appellate scheme. Further, the order dated 26.03.2020 was challenged before this Hon'ble Tribunal. This Hon'ble Tribunal had set aside the order dated 26.03.2020 vide its order dated 20.09.2023, and the matter was remanded to the PCIT.

7.2 Though the order dated 26.03.2020 was set aside, the Ld. CIT(A) decided the appeal filed against the assessment order dated 13.09.2021 on merits vide its order dated 18.03.2024, The Ld. CIT (A) in a well-reasoned order decided the appeal in favour of the Appellant. It is submitted that the Appellant had submitted a copy of this Hon'ble Tribunal's order dated 20.09.2023 before the CIT(A), however, even then, the CIT(A) had proceeded to decide the appeal on merits. Once the merits of the case have been considered and a decision has been made, the PCIT should have considered the same while passing the Impugned Order."

6. We have perused the records. Heard Id representative for the appellant assessee and Id CIT(DR) for the respondent revenue.

7. On the basis of the grounds raised by the appellant assessee under appeal, the main point for determination is as to whether the Id PCIT, while exercising revisional powers u/s. 263 of the Act, has erred in holding that the assessment order dated 22.12.2017 for A.Y. 2010-11 passed u/s. 143(3)/147 of the Act is erroneous and prejudicial to the interest of the revenue?

8. Ld PCIT, vide impugned order dated 18.03.2025 passed u/s. 263 of the Act, has held that the assessment order dated 22.12.2017 is erroneous and prejudicial to the interest of the revenue mainly on the ground that the nature and source of the advance of Rs. 77,73,275/- taken in cash by the assessee on behalf of his two sons Amir Singh and Shabeer Singh, for the sale of assessee's son's agricultural land from the four buyers namely Shri Rajeev Sharma, Shri Satendra Singh Sengar, Shri Naresh Singh Parmar and Shri Devi Pratap Singh Chauhan, was unexplained and the assessing officer did not make appropriate enquiries. It is undisputed fact that Rs. 77,73,275/- were received by the assessee in cash on behalf of his aforementioned two sons against the sale of their agricultural land and deposited the same in assessee's own bank account instead of his son's bank accounts. It is also not disputed that the land in question was agricultural land and hence exempt from the tax.

9. During the assessment proceedings and in response to the notice u/s. 148 of the Act, assessee e-filed the return in response thereof on 09.11.2017, at Rs. 1,50,420/- and further showing an income of Rs. 9,75,240 from the agriculture. Assessing officer issued notice u/s. 143(2) along with the reasons. Assessee submitted before the Id assessing officer, the required evidence in the form of Mandi receipts, copies of Khasra and Khatauni etc. Ld assessing officer also enquired from the four buyers in respect of the nature and source of the amount and recorded their statements on oath

10. According to the assessment order dated 22.12.2017, Shri Rajeev Sharma (buyer) deposed on 29.11.2017. Shri Devi Pratap Singh (buyer) deposed on 30.11.2017, Shri Satendra Singh Sengar and Shri Naresh Pratap Singh Parmar deposed on 12.02.2017 before the Id assessing officer. After taking on oath statement of all the four buyers, the statements were taken on record without any adverse comment by the assessing officer. In such a fact scenario, it is easily inferred that the assessing officer was satisfied in respect of the nature and source of the said transactions. The assessing officer, taking on oath statements of all four buyers and placing them on record without any adverse remarks is self explanatory that the deponents/buyers corroborated assessee's submissions in respect of the nature and source of the said transactions.

11. Some of the sample sale deeds were provided by the assessee which are at page 94 to 160 of the paper book. According to the contents of these registered sale deeds, the two sons of the assessee have accepted that they have received the part consideration in past at the time of execution of sale deeds.

12. This apart, a note dated 19.02.2020 written by one of the assessee's son Shabeer Singh along with an affidavit dated 20.11.2023 and another undated note written by assessee's other son Mr. Amir Singh along with his affidavit dated 20.11.2023 also suggests that they had verbally authorized their father/ assessee Shri Ajit Singh in the year 2009 to receive advance of payment on their behalf during the period 2009-10 specifically from all the above named four buyers towards purchase of sale of land situated in villages Bapoli, Negoa and Hanaotia etc. Law does not mandate that there should be a written agreement before the execution of sale deed of an immovable property. Past considerations in India is valid, enforceable and tenable under law differing from English law where it is typically not. In rural India, people, still do most of their transactions on verbal assurances hence revenue is not right in observing that no person shall advance money, without documentation. Suspicious, how so strong it may be, cannot take place of evidence. To our minds the assessment order dated 22.12.2017 is neither erroneous nor adverse to the interest of revenue. It is a settled legal

proposition that if initial actions is not in consonance with law all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim “sub lato fundamento cadit opus” meaning thereby that “foundation being removed, structure/work falls”, comes into play. The consequential assessment, therefore, has no leg to stand. The aforesaid point is accordingly determined in positive in favour of the appellant assessee and against the respondent revenue. Assessee’s appeal is liable to be allowed.

**SA No 02/Agr/2025**

13. Since assessee’s appeal ITA 263/Agr/2025 has been allowed, this stay application becomes infructuous and is liable to be dismissed as infructuous.

14. In the result, assessee’s appeal ITA No 263/Agr/2025 is allowed. Stay application No 02/Agr/2025 stands dismissed as infructuous. Impugned order dated 18.03.2025 is set aside and the original assessment order dated 22.12.2017 is sustained.

***Order pronounced on - 17.04.2026***

**Sd/-  
(M BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER**

Dated: 17.04.2026

\*Aamir Siddiqui, PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra