IN THE INCOME TAX APPELLATE TRIBUNAL
Camp Bench at Jalandhar

Before Shri N.K Saini, Vice President
and Shri Ravish Sood, Judicial Member

ITA No. 401 to 407/Asr/2017
(Assessment Year(s): 2006-07, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15)

Sh. Naresh Kumar Anand HUF, C/o Anand Rubber & Plastic (P) Ltd, H.O. Mai Hiran Gate, Jalandhar	Vs.	Pr. Commissioner of Income Tax-2, Jalandhar
PAN – AADHN0422N		
(Appellant)		(Respondent)

Assessee by: Shri Gunjeet Syal, A.R
Revenue by: Shri Ajay Goyal, C.I.T, D.R

Date of Hearing: 10.01.2019
Date of Pronouncement: 15.01.2019

O R D E R

PER BENCH

The present appeals filed by the assessee for A.Ys. 2006-07, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 are directed against the respective orders passed by the Principal Commissioner of Income Tax-2, Jalandhar (for short 'Pr. CIT') under Sec. 263 of the Income Tax Act, 1961 (for short 'I.T. Act'), dated 17.05.2017, which in turn arises from the respective assessment orders passed by the A.O under Sec. 143(3) of the I.T. Act, dated 03.06.2016 for the aforementioned years. As common issues are involved in the aforementioned appeals, therefore, the same are being disposed off by way of a consolidate order. We shall dispose off the aforesaid appeals by taking the appeal filed by the assessee for A.Y. 2006-07 as the lead year. The assessee

assailing the order of the Pr. CIT has raised before us the following grounds of appeal:-

"1 That on the facts and circumstances of the case and in law the order dated 17.05.2017 passed by the Ld. CIT-II under section 263 holding the assessment order dated 03.06.2016 to be erroneous and prejudicial to interests of revenue on certain issues, is beyond jurisdiction, bad in law and void ab initio.

2. That the Ld. CIT-II erred on facts and in law in exercising reversionary powers under section 263 of the Act in respect of income from House Property, without appreciating that the twin conditions of that section viz. assessment order being erroneous as well as prejudicial to the interests of the Revenue, were not satisfied in the appellant's case.

3. That the Ld. CIT-II erred on facts and in law in setting aside the assessment order, without arriving at any conclusive finding on merits as to how the assessment order was erroneous as well as prejudicial to the interests of Revenue. Infact, the impugned order has been passed on grounds not mentioned in the show cause notice.

4. That on the facts and circumstances of the case and in law, the Ld CIT-II has erred in observing that the AO failed to make any inquiry or verification to ascertain the lease rent received from M/s Larsen & Turbo Ltd (now M/s Lafarage India P. Ltd.) under the head "Income from House Property", as offered by the appellant, despite the records clearly indicating specific queries being raised by the AO and the same being answered by the appellant.

5. That the Ld. CIT-II has erred in holding that the AO has wrongly assessed the lease rent received from M/s Larsen & Turbo Ltd (now M/s Lafarage India P. Ltd.) under the head "Income from House Property" and thereby allowed excess deduction u/s 24(a) ignoring the facts of the case and also ignoring the fact that the order was passed by the A.O. after due application of mind and in accordance with law.

6. That on the facts and circumstances of the case and in law, the Ld. CIT-II has erred in exercising jurisdiction u/s 263 of the Act in respect of lease rent received from M/s Larsen & Turbo Ltd (now M/s Lafarage India P. Ltd.) under the head "Income from House Property", without appreciating that there was cleavage of judicial opinion on aforesaid issue, therefore, could at best be said to be one of the possible views or debatable, ousting jurisdiction u/s 263.

7. The appellant craves leave to add, amend or vary from the above grounds of appeal at or before the time of hearing."

2. Briefly stated, the assessee HUF had filed its return of income for A.Y. 2006-07 on 21.03.2007, declaring total income at Rs. 9,26,788/-. In the computation of income filed along with its return of income, the assessee had declared "Income from House property" at Rs. 9,73,340/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the I.T. Act.

3. Subsequently, the case of the assessee was reopened, vide notice issued under Sec. 148, dated 09.02.2009 on the ground that as per the information received from M/s Larsen & Toubro Ltd., vide their letter dated 18.04.2007, an amount of Rs. 14,00,000/- was paid by them to the assessee as lease rent for land, which however was declared by the assessee in its return of income under the head "Income from House property" after claiming deduction of Rs. 4,17,145/- (being 30% of the net annual value of Rs. 13,90,485/-) under Sec. 24(a) of the I.T. Act. As is discernible from a perusal of the 'reasons to believe' recorded by the A.O, the latter held a bonafide belief that as the aforesaid lease rent received by the assessee from Larsen & Toubro Ltd. was chargeable to tax under the head "Income from Other sources", hence the assessee had claimed excessive deduction of Rs. 4,17,145/- under Sec. 24(a) of the I.T. Act and its income to the said extent had escaped assessment. Subsequently, the A.O framed assessment under Sec. 143(3) r.w.s. 147 on 24.12.2009 and assessed the lease rent received by the assessee from M/s Larsen & Toubro Ltd. under the head "Income from Other sources" and assessed its total income at Rs. 14,14,028/-. The A.O while framing the aforesaid assessment observed that the assessee as per the 'Agreement of lease' with the aforementioned lessee company viz. M/s Larsen & Toubro Ltd. was only in receipt of lease rent for land from the latter.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating at length on the contentions advanced by the assessee to impress upon him that the lease rent was rightly shown under the head "Income from House property", was however not persuaded to subscribe to the same. It was observed by the CIT(A) that as per the terms and conditions of the 'Agreement of

lease', dated 01.09.2005, the property under reference given on lease was an open plot of land admeasuring 6020 Sq. Mtrs. (out of total area of 15500 Sq. Mtrs.). On the basis of the aforesaid deliberations, the CIT(A) concluded that the A.O had rightly assessed the lease rental of the open plot of land under the head "Income from Other sources". Apart therefrom, as a corollary following therein, it was observed by the CIT(A) that the assessee had wrongly claimed deduction under Sec. 24(a) of the I.T. Act by treating the lease rental income as "Income from House property". In the backdrop of his aforesaid observations the CIT(A) upheld the order passed by the A.O.

5. The assessee being aggrieved with the order of the CIT(A) carried the matter in appeal before the Income Tax Appellate Tribunal (for short 'Tribunal'). It was the contention of the assessee before the Tribunal that the information provided by the lessee company viz. M/s Larsen & Toubro Ltd. was incorrect. It was submitted by the assessee that M/s Lafarage India Pvt. Ltd. which took over the leased land from M/s Larsen & Toubro Ltd., had in its reply dated 05.09.2015 that was furnished in compliance to a letter that was issued by the A.O, had clearly stated that though the agreement was only for lease of land, however, in part of the land there was a permanent structure which was being used by the tenant for storage on the basis of a mutual understanding. The assessee in order to fortify its aforesaid claim placed on the record of the Tribunal certain photographs which revealed existence of a building on the said land. On the basis of the documents placed on record and the contentions advanced, the Tribunal, vide its order passed in ITA No. 368/Asr/2015, dated 04.02.2016 for A.Y. 2006-07, remitted the matter to the file of the A.O to decide the matter afresh in accordance with law, after taking into

consideration the material that was placed on record by the assessee before it.

6. The A.O in the course of the 'set aside' proceedings observed that the lessee viz. M/s Lafarage India Pvt. Ltd., vide its reply dated 05.09.2015 had stated that though the agreement was only for lease of land, however in part of the land there was a small building which was being used for storage of cement as per mutual understanding. The A.O observed that no new facts emerged from the aforesaid letter dated 05.09.2015 of the lessee viz. M/s Lafarage India Pvt. Ltd. It was noticed by him that his predecessor at Page 3 of the assessment order had stated that he had visited the site on 26.10.2009, and had found that there was a shed for RMC plant and an office building admeasuring 800 to 900 Sq. Ft. at the entrance of the vacant land. It was observed by the A.O that his predecessor took cognizance of the letter that was earlier received from M/s Larsen & Toubro Ltd. on 08.12.2009, wherein the latter had categorically stated that the lease agreement was made with the assessee only for barren land for which rent was paid, and the RMC plant was installed by them. In the backdrop of his aforesaid observations, the A.O called upon the assessee to explain as to why the assessment in its case may not be framed in the manner it was earlier assessed by his predecessor under Sec. 143(3), vide his order dated 24.12.2009. The assessee in its reply submitted before the A.O that there was a building measuring 800 to 900 Sq. Ft. on the leased land which was being used by the tenant, as per mutual understanding for storage purposes. The A.O after perusing the aforesaid reply of the assessee did find favour with the claim of the assessee that a building existed on the piece of land that was being used by the lessee, though there was no mention of the same in the 'Agreement of lease'. The A.O while concluding as

hereinabove observed, that though his predecessor while framing the assessment had also verified the factual position as regards the existence of a building on the leased land by personally visiting the site, however, in the backdrop of the claim of the tenant that the same was not a part of the lease agreement, therefore, no cognizance was taken of the same. In the backdrop of the aforesaid facts, the A.O being of the view that it stood established that the property let out by the assessee comprised of a building and land appurtenant thereto, thus concluded that the lease rent had rightly been shown by the assessee under the head “Income from House property”. On the basis of his aforesaid deliberations the A.O accepted the returned income of the assessee disclosing net taxable income at Rs. 9,26,790/-.

7. The Pr. CIT-2, Jalandhar called for the records of the assessee, and being of the view that the order passed by the A.O under Sec. 143(3) of the I.T. Act, dated 03.06.2016 was erroneous, to the extent prejudicial to the interest of the revenue, therein vide his ‘Show cause’ notice (for short ‘SCN’) dated 03.03.2017, called upon the assessee to explain as to why the said order may not be revised under Sec. 263 of the I.T. Act. The objections filed by the assessee as regards the validity of the jurisdiction assumed by the revisional authority under Sec. 263 of the I.T. Act, as well as the contentions advanced to fortify its claim that the lease rent was rightly shown as “Income from House property”, however did not find favour with the Pr. CIT. The Pr. CIT declined to accept the contentions advanced by the assessee for multiple reasons viz. (i) that the lessee viz. M/s Larsen and Toubro Ltd. as per ‘Agreement of lease’, dated 01.09.2005 had only taken on lease open land admeasuring 6020 Sq. Mtrs. at Plot No. 144 Milestone, Mathura Road, Faridabad, with no permanent structure, for the purposes of setting up a concrete mix plant; (ii) that no lease

rent was paid by the lessee for any building; (iii) that 6020 Sq. Mtrs. of land cannot be said to be appurtenant to 700 Sq. ft. of covered area by any stretch on imagination, and thus the existence of a building on the said land would even otherwise be immaterial to decide the issue under consideration; (v) that during the year under consideration i.e. previous year 2009-10 M/s Larsen and Toubro Ltd. were the lessees and they had categorically stated, vide their letter dated 04.12.2009 that there was no construction on the demised land; and (vi) that the subsequent submissions of M/s Lafarage India Pvt. Ltd. which was made only on 05.09.2015 would only be pertinent to the ground situation during the financial year 2015-16 and had no relevance for financial year 2006-07, were thus bereft of any evidentiary value. Insofar, the observations of the Pr. CIT that 6020 Sq. Mtrs. of land cannot be said to be appurtenant to 700 Sq. ft. of covered area was concerned, support was drawn by him from the judgment of Hon'ble High Court of Punjab & Haryana in the case of Govardhan Dass & Sons Vs. CIT (2007) 158 Taxmann 465 (P&H) and the judgment of the Hon'ble Supreme Court in the case of Maharaj Singh Vs. State of UP [AIR 1976 SC 2602]. Apart therefrom, the multiple objections raised by the assessee as regards the validity of jurisdiction assumed by the Pr. CIT for revising the order under Sec. 263 also stood rejected. In the backdrop of his aforesaid deliberations, the Pr. CIT concluded that the order passed by the A.O under Sec. 143(3), dated 03.06.2016 was erroneous, in as much as, it was prejudicial to the interest of revenue. The Pr. CIT observed that the A.O had while framing the assessment wrongly assessed the lease rent of Rs. 14,00,000/- received from M/s Larsen & Toubro Ltd., under the head "Income from House property" and thereby, allowed excess deduction under Sec. 24(a) amounting to Rs. 4,17,145/-. The Pr. CIT, thus directed the A.O to reframe the assessment by assessing the lease rent of Rs. 14,00,000/- under the

head “Income from Other sources” and disallow the deduction under Sec. 24(a) amounting to Rs. 4,17,145/- as was earlier allowed by him while framing the assessment under Sec. 143(3), dated 03.06.2016.

8. The assessee being aggrieved with the order of the Pr. CIT has carried the matter in appeal before us. The Learned Authorized Representative (for short ‘A.R’) for the assessee Shri Gunjeet Syal at the very outset assailed the validity of the order passed by the Pr. CIT-2, Jalandhar under Sec. 263 of the I.T. Act, therein revising the concluded assessment framed by the A.O under Sec. 143(3) of the I.T. Act, dated 03.06.2016. It was the contention of the Ld. A.R that the Pr.CIT misconceiving the facts as well as misconstruing the settled position of law had wrongly observed that the lease income received by the assessee from M/s Larsen and Toubro Ltd. was liable to be assessed as “Income from Other sources”, and not as “Income from House Property” as shown by the assessee. It was averred by the Ld. A.R that the term “land appurtenant thereto” as finds mentioned in Sec. 22 of the I.T. Act has not been defined under the I.T. Act. It was the contention of the Ld. A.R that the 6020 Sq. Mtrs. of land that was leased by the assessee vide “Agreement of lease”, dated 01.09.2005 to M/s Larsen and Toubro Ltd. was ‘appurtenant’ to the office building (covered area 800 to 900 Sq. ft.) and the shed for RMC plant as were situated on the said piece of land. Mr. Syal submitted, that as the aforesaid 6020 Sq. Mtrs. of land and the office building along with the shed were being exploited for running the RMC plant by the lessee, thus the land could safely be held as appurtenant to the aforementioned office building and shed. The Ld. A.R fairly admitted that though the ‘Agreement of lease”, dated 01.09.2005 with M/s Larsen and Toubro Ltd. was only in respect of lease of ‘open land’ admeasuring 6020 Sq. Mtrs. at Plot No. 144 Milestone, Mathura Road,

Faridabad, however by way of a mutual agreement the assessee had permitted the lessee to use the office building and shed in the course of its aforesaid business. In order to buttress his aforesaid claim, the Ld. A.R submitted that the then A.O i.e. DCIT, Circle-IV, Jalandhar who had earlier framed the assessment under Sec. 143(3) r.w.s. 147 of the I.T. Act, vide his order dated 24.12.2009 observed that he had in the course of the assessment proceedings along with his Inspector visited the site (while on his official duty to the Income Tax Settlement Commission on 26.10.2009 and 27.10.2009), and had found that there was a shed for RMC plant and also an office building (covered area 800 to 900 Sq. ft.). In order to support his aforesaid claim, the Ld. A.R took us through the relevant observations of the A.O as stood recorded in his order passed under Sec. 143(3) r.w.s. 147, dated 24.12.2009 (Page 13) of the assesses 'Paper Book' (for short 'APB'). The Ld. A.R further submitted that the Pr. CIT while relying on the judgment of Hon'ble High Court of Punjab & Haryana in the case of Govardhan Dass & Sons Vs. CIT (2007) 158 Taxmann 465 (P&H) and the judgment of the Hon'ble Supreme Court in the case of Maharaj Singh Vs. State of UP [AIR 1976 SC 2602], had failed to appreciate that the facts involved in the said judicial pronouncements were distinguishable as against those involved in the present appeal. It was submitted by the Ld. A.R that in the case of Govardhan Dass & Sons (supra) the facts were that the assessee had let out *kutcha* plinths on open land. It was averred by the Ld. A.R that the Hon'ble High Court of Punjab & Haryana in the backdrop of the fact that *kutcha* plinths could not be construed as a 'building', had thus concluded that the income from letting out the same could not have been assessed under the head "Income from House Property". Insofar, the judgment of the Hon'ble Supreme Court in the case of Maharaj Singh Vs. State of UP & Ors [1976 AIR (SC) 2602] was concerned, it was submitted by the Ld.

A.R that the said judgment was rendered by the Hon'ble Apex Court in reference to Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, and the term tested by the Hon'ble Apex Court was not the "lands appurtenant thereto", but the "site of the wells or the buildings within the area appurtenant thereto", and that too in context of settling all such wells, trees in abadi and all buildings situate within the limits of the state belonging to and held by an intermediary or tenant or other person, upon them. It was thus averred by the Ld. A.R that the judgment of the Hon'ble Supreme Court in the case of Maharaj Singh (supra) was absolutely out of context of the issue under consideration in the present appeal before us. In the backdrop of his aforesaid contention, it was submitted by the Ld. A.R that now when the assessee was in receipt of lease rent in respect of the land and the office building/shed that was being used by the lessee viz. M/s Larsen & Toubro in the course of their business of running a RMC plant, thus the lease income had rightly been shown by the assessee as its "Income from House property". On the basis of his aforesaid submissions, it was the claim of the Ld. A.R that the Pr. CIT misconceiving the facts and the settled position of law had wrongly dislodged the well founded view of the A.O that the assessee had rightly shown the lease income under the head "Income from House property". It was thus averred by the Ld. A.R that the order passed by the Pr. CIT under Sec. 263 of the I.T. Act could not be sustained and was liable to be vacated.

9. Per contra, the Learned Departmental Representative (for short 'D.R') submitted that a bare perusal of the "Agreement of lease", dated 01.09.2005 revealed that the assessee was in receipt of lease income during the year under consideration for leasing of 'open land' admeasuring 6020 Sq. Mtrs., at Plot No. 144 Milestone, Mathura

Road, Faridabad. Apart therefrom, the Ld. D.R took us through the letter dated 08.12.2009 that was furnished by Larsen & Toubro Ltd., in reply to the letter dated 15.09.2009 of the then A.O i.e. DCIT. Range-IV, Jalandhar (Page 13 of 'APB'). It was submitted by the Ld. D.R that the lessee viz. Larsen & Tourbo Ltd. had categorically stated that there was no construction on the aforesaid 6020 Sq. Mtrs. of barren land that was being used by them for their RMC plant. It was further submitted by the Ld. D.R that the aforesaid lessee had also affirmed that there was no building or any construction on the aforesaid piece of land at the time of execution of the lease agreement with the assessee. Further, it was submitted by the Ld. D.R that the lessee had also stated that the rent was being paid by them for the barren land on which they have installed their RMC plant. The Ld. D.R submitted that during the existence of the aforesaid "Agreement of lease", no oral or hearsay evidence could be admitted. In sum and substance, it was the contention of the Ld. D.R that as the agreement of lease was only for the land, therefore, no part of the lease rent could be related to any building. Apart therefrom, it was submitted by the Ld. D.R that as the dominant or rather the only intention of the assessee as was discernible from the "Agreement of lease", dated 01.09.2005 was to give the land on lease, thus there was no occasion for characterizing of such land as being "appurtenant" to any building. It was submitted by the Ld. D.R that the Pr. CIT observing that the A.O while framing the assessment under Sec. 143(3), dated 03.06.2016 had erroneously accepted the claim of the assessee that the lease rent from land was to be assessed as "Income from House Property", which therein had rendered the order passed by him as erroneous, to the extent prejudicial to the interest of the revenue, had thus rightly revised the same in exercise of his powers under Sec. 263 of the I.T. Act.

10. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. The assessee appellant by filing the present appeal has sought our indulgence for adjudicating as to whether the Pr. CIT-2, Jalandhar is right in law and facts of the case in revising under Sec. 263 of the I.T. Act, the order passed by the A.O under Sec. 143(3), dated 03.06.2016. As observed by us hereinabove, the Pr. CIT had revised the order passed by the A.O under Sec. 143(3), on the ground that the lease rent that was received by the assessee in respect of 6020 Sq. Mtrs. of 'Open land' situated at Plot No. 144 Milestone, Mathura Road, Faridabad from M/s Larsen & Toubro Ltd. in terms of the "Agreement of lease", dated 01.09.2005 was though liable to be assessed under the head "Income from Other sources", but the A.O had erroneously accepted the claim of the assessee and assessed the same under the head "Income from House property".

11. On a perusal of the "Agreement of lease", dated 01.09.2005 it stands revealed that the assessee had leased 6020 Sq. Mtrs. of "Open land" situated at Plot No. 144 Milestone, Mathura Road, Faridabad, to M/s Larsen & Toubro Ltd., Registered Office : L & T House, Narottam Morarji Marg, Ballard Estate for an initial period of 3 years commencing from the date of execution of the agreement of lease i.e. 01.09.2005. As is discernible from the aforesaid lease agreement, the property that was leased by the assessee to the lessee viz. M/s Larsen & Toubro Ltd. was admittedly 6020 Sq .Mtrs. of "Open land" only. The aforesaid land was leased by the assessee to the abovementioned lessee for the purpose of setting up and operating a 'Ready Mix Concrete' plant (for short 'RMC') for making ready mix concrete. In sum and substance, the property that was leased by the assessee to the aforementioned lessee viz. M/s Larsen & Toubro Ltd. was a

barren/open land admeasuring 6020 Sq. Mtrs. at Plot No. 144, Milestone, Mathura Road, Faridabad, for the purpose of setting up and operating a RMC plant.

12. We are unable to persuade ourselves to subscribe to the contention advanced by the Ld. A.R that the property which was leased to the aforementioned party comprised of the aforesaid land along with an office building and a shed. The contention advanced by the assessee that though initially only the aforesaid open land was given on lease to the aforementioned lessee, but thereafter the latter as per mutual understanding was permitted to use the office building and the shed for the purpose of storing of cement bags in the course of its business, is divorced of any supporting evidence and cannot be accepted. Rather, on a perusal of the lease agreement, it stands revealed that the rent that was received by the assessee from the aforementioned lessee was only in respect of the aforesaid 6020 Sq. Mtrs. of 'Open land' and not for any building/super structure. Apart therefrom, we find that the lessee viz. M/s Larsen & Toubro Ltd. in their letter dated 08.12.2009 that was filed in compliance to the letter dated 15.09.2009 issued by the then A.O, viz. DCIT, Range-IV, Jalandhar, had categorically stated that there was no construction on the aforesaid 6020 Sq. Mtrs. of barren land which was being used by them for their RMC Plant. Further, it was clearly stated by them that on the aforesaid piece of land there was no building or any construction at the time of execution of the lease agreement with the assessee. It was also stated by the lessee that the rent was being paid by them for the barren land on which they have installed their RMC plant.

13. Be that as it may, in the backdrop of the aforesaid facts, we are of the considered view that the assessee had leased out 6020 Sq. Mtrs.

of open land to the aforementioned lessee viz. M/s Larsen & Toubro Ltd., and the lease rent that was being received was in respect of the same. Insofar, the observation of the A.O that he had visited the site on 26.10.2009 and 27.10.2009 along with his Inspector, and found that there was a shed for RMC plant and also an office building of about 800 to 900 Sq. Mtrs. at the entrance of the vacant land, in our considered view will have no material bearing on the adjudication of the issue under consideration. We find that the aforesaid observation of the A.O suffers from certain loose ends and thus does not inspire much of confidence. The A.O had at no stage given a concrete finding that the office building or shed situated on the aforesaid piece of vacant land was owned by the assessee and had been let out to the aforementioned lessee. Rather, we find that the aforesaid report of the A.O clearly militates against the reply dated 08.12.2009 that was filed by the lessee viz. M/s Larsen & Toubro Ltd., wherein they had categorically stated that there was no construction on the 6020 Sq. Mtrs. of barren land on which they have installed their RMC plant, and the rent was being paid by them for the said piece of land only. In our considered view, now when the lease rent that was received by the assessee during the year under consideration was the same as was agreed as per terms of the “Agreement of lease”, dated 01.09.2005, thus it can safely or rather inescapably be concluded that the said lease rent was only in respect of the ‘Open land’ admeasuring 6020 Sq. Mtrs. that was leased by the assessee to M/s Larsen & Toubro Ltd. Insofar, the support drawn by the Ld. A.R on the reply dated 05.09.2015 of M/s Lafarge India Pvt. Ltd., wherein the latter had stated that there was a permanent structure which was being used by the tenant for storage on the basis of a mutual understanding, in our considered view would also not assist the case of the assessee. We are of the considered view that the Pr. CIT had rightly observed that such

statement would though be pertinent to the ground situation during the Financial Year 2015-16, however the same would in no way have any bearing on the facts relatable to the year under consideration viz. Financial Year 2006-07. Be that as it may, we are of the considered view that as the assessee was in receipt of lease rent of Rs. 14,00,000/- from M/s Larsen & Toubro Ltd. for the open land leased out to them, thus the same, as rightly observed by the Pr. CIT was liable to be assessed under the head "Income from Other sources", and not as the income of the assessee from "house property". In the backdrop of our aforesaid observations, we find no infirmity in the order of Pr. CIT, who in our considered view had rightly observed that the A.O while framing the assessment under Sec. 143(3), dated 03.06.2016, was in error by accepting the claim of the assessee and subjecting the aforesaid lease rent to tax under the head 'Income from House property".

14. We are also not persuaded to subscribe to the contention advanced by the Ld. A.R that the Pr. CIT had revised the assessment made by the A.O under Sec. 143(3), dated 03.06.2016, only on the basis of jurisdiction assumed by him in terms of Clause (d) to Explanation 2 to Sec. 263. Admittedly, one of the reason that had weighed in the mind of the Pr. CIT for revising the concluded assessment of the assessee was that the same was not found to be in conformity with the order passed by the Hon'ble High Court of Punjab & Haryana in the case of Govardhan Dass & Sons Vs. CIT (2007) 288 ITR 481 (P&H). However, a perusal of the 'SCN', dated 03.03.2017 issued by the Pr. CIT under Sec. 263 reveals that he had categorically observed that the A.O had also ignored the fact that as per the lease agreement with M/s Larsen & Toubro Ltd. only land had been leased and not the building on the land. Apart therefrom, it was

also observed by the revisional authority that the A.O had wrongly held that 6020 Sq. Mtrs. land leased to M/s Larsen & Toubro Ltd. (now Lafarage India Pvt. Ltd.), was land appurtenant to building and therefore assessable as “Income from House property”. In sum in substance, the Pr. CIT had sought to revise the order passed by the A.O under Sec. 143(3), dated 03.06.2016 on two grounds viz. (i) that the A.O had wrongly assumed the facts while assessing the lease rent under the head “Income from House property”; and (ii) that the view of the A.O was not in conformity with the judgment of the Hon’ble High Court of Punjab & Haryana in the case of Govardhan Dass & Sons Vs. CIT (2007) 288 ITR 481 (P&H). Be that as it may, we may herein observe that the Hon’ble Supreme Court in the case of CIT, Mumbai Amitabh Bachchan [Civil Appeal No. 5009 of 2016 (arising out of SLP(C) No. 11621 of 2009), dated 11.05.2016] had observed that there is nothing in Sec. 263 which would require the CIT to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. The Hon’ble Apex Court had observed that there in nothing in Sec. 263 to raise the said notice to the status of a mandatory show cause notice affecting the initiation of the exercise in the absence thereof. We thus are of the considered view, that though in the case before us the Pr. CIT had assumed jurisdiction under Sec. 263 by clearly putting the assessee to notice that he sought to revise the concluded assessment on the aforesaid two grounds viz. (i) that the A.O had wrongly assumed the facts while assessing the lease rent under the head “Income from House property”; and (ii) that the view of the A.O was not in conformity with the judgment of the Hon’ble High Court of Punjab & Haryana in the case of Govardhan Dass & Sons Vs. CIT (2007) 288 ITR 481 (P&H), however, even otherwise in the backdrop of the judgment of the Hon’ble Supreme Court in the case of Amitabh Bachchan (supra) no

infirmity does arise in respect of the assumption of jurisdiction by the revisional authority.

15. We shall now advert to the observations of the Pr. CIT that the view taken by the A.O that the land could be treated as appurtenant to the shed/building in existence on the said land, was not found to be in conformity with the judgment of the Hon'ble High Court of Punjab & Haryana in the case of Govardhan Dass & Sons Vs. CIT (2007) 288 ITR 481 (P&H). On a perusal of the facts as were there before the Hon'ble High Court, we find that the assessee owned 18 acres of open land which was adjacent to the residential house that was situated on about half acre of such land. The assessee had let out *kutcha* plinths on open land to FCI. The rental income received by the assessee was shown by the assessee under the head "Income from House property". On appeal, the Hon'ble High Court concluded that as the *kutcha* plinths on open land by no stretch of imagination could be held as 'house property', hence the rental income received therefrom could not be assessed under the head "Income from House Property". Apart therefrom, it was observed by the Hon'ble High Court that the open land also could not be taken as "appurtenant land" to the residential house. It was observed by the Hon'ble High Court that what is covered by the expression "appurtenant" is the land which is necessary for the enjoyment of the building and not the land alone. We are of the considered view that as in the case of the assessee before us, there is no material which would prove that the 6020 Sq. Mtrs. of open land leased by the assessee to M/s Larsen & Toubro Ltd. was necessary for enjoyment of any building, thus the same could by no means be held as "appurtenant land" as envisaged in Section 22 of the I.T. Act and assessed under the head "Income from House property". We are of the considered view that the Pr. CIT-2 Jalandhar rightly observing that the

view taken by the A.O that the property let out by the assessee comprised of "building" and "land appurtenant thereto" was not in conformity with the judgment of the Hon'ble High Court of Punjab & Haryana in the case of Govardhan Dass & Sons (supra), had thus on the said count too rightly exercised his revisional jurisdiction under Sec. 263 of the I.T. Act.

16. We thus in terms of our aforesaid observations, finding ourselves to be in agreement with the view taken by the Pr. CIT that the order passed by the A.O under Sec. 143(3), dated 03.06.2016 was erroneous, to the extent prejudicial to the interest of the revenue, had thus rightly revised the same and directed the A.O to reframe the assessment by assessing the lease rent of Rs. 14,00,000/- under the head "Income from Other sources" and disallow the deduction under Sec. 24(a) amounting to Rs. 4,17,145/-.

17. We thus uphold the order passed by the Pr. CIT-2, Jalandhar and finding no merit in the appeal filed by the assessee, dismiss the same.

18. The appeal of the assessee for A.Y. 2006-07 viz. ITA No. 401/Asr./2017 is dismissed.

19. As the facts and the issue involved in the other six appeals filed by the assessee for A.Ys. 2009-10 to 2014-15, viz. ITA Nos. 402 to 407/Asr./2017 remains the same as were there before us in the aforementioned appeal of the assessee for A.Y. 2006-07, viz ITA No. 401/Asr./2017, therefore, our order passed while disposing off the appeal of the assessee for A.Y. 2006-07, viz. ITA No. 401/Asr./2017 shall apply *mutatis mutandis* for the disposal of the appeals of the assessee for A.Ys. 2009-10 to 2014-15, viz. ITA Nos. 402 to

407/Asr./2017. The appeals of the assessee for the aforementioned A.Ys. 2009-10 to 2014-15, viz. ITA Nos. 402 to 407/Asr./2017 are thus dismissed in terms of our observations recorded while disposing off the appeal of the assessee for A.Y. 2006-07, viz. ITA No. 401/Asr./2017.

Order pronounced in the open court on 15/01/2019

Sd/-	*Sd/-*
(N.K. Saini)	(Ravish Sood)
VICE PRESIDENT	JUDICIAL MEMBER

Place : Jalandhar; Dated 15.01.2019
Ps. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. DR, ITAT, Camp Bench, Jalandhar
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण/ITAT, Camp. Bench, Jalandhar

Sr.No.	Details	Date	Initials	Designation
1	Draft dictated on			Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the Sr.PS/PS	15.1.19		Sr.PS/PS
6	Kept for pronouncement on	15.1.19		Sr.PS/PS
7	File sent to the Bench Clerk	16.1.19		Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			