IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-F : NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

ITA No.3714/Del/2026
Assessment Year : 2022-23

Shri Mukul Rohatgi, 65, Golf Links, New Delhi – 110 003. PAN : AACPR4789B.	Vs.	Assistant Commissioner of Income Tax, Circle-61(1), Room No.2005, 20th Floor, Civic Centre, Minto Road, New Delhi.
(Appellant)		(Respondent)

Appellant by	:	Shri P.C. Yadav, Shri Subhash Acharya, Shri R.K. Vashishth, Shri Mayank Sharma and Shri Vaidik Rao, Advocates.
Respondent by	:	Shri Sharvan Kumar, CIT-DR.

Date of hearing	:	04.06.2026
Date of pronouncement	:	28.08.2026

ORDER

Per Mahavir Singh, Vice President:

This appeal by the assessee is directed against the revisional order of learned Principal Commissioner of Income Tax, Delhi-12 dated 27th March, 2026 passed under Section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 2022-23. The assessment was framed by Assessing Officer of National Faceless Assessment Centre (NFAC) u/s. 143(3) read with section 144B of the Act vide its order dated 28.3.2024 for the A.Y. 2022-23.

2. The first jurisdictional issue raised by the assessee is that the order of the PCIT is bad in law as the same has been passed by an officer in the rank of CCIT instead of PCIT, who has only the authority to pass the order without there being any show cause notice issued by the CCIT or any authority of law empowered by the CBDT to execute the work of PCIT. For this assessee has raised the following Additional Ground of Appeal:

> *"On the facts and circumstances of the case, the order of 263 passed by PCIT-12, is bad in law and void ab initio as the has*

> *been passed by an officer of the rank of CCIT, stepping into the shoes of PCIT, without there being any show cause notice issued by CCIT or any authority of law or any directions / orders issued by CBDT empowering the CCIT to execute the work of PCIT-12."*

3. Ld. Counsel for the assessee stated that the aforesaid additional ground of appeal is purely legal in nature and all the facts relating to this ground are available on record and no new facts are to be investigated for the adjudication of this additional ground. Ld. Counsel for the assessee stated that assessee can raise additional legal ground or even a fresh legal ground at any stage of the proceedings and for this he relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Varas International 284 ITR 80 (SC) and NTPC vs. CIT 229 ITR 383 (SC). Ld. Counsel for the assessee further stated that as the assessee could not raise this legal issue before the Tribunal originally and even could not raise this issue before the PCIT at the time of proceedings initiated for revising the assessment u/s. 263 of the Act, because the assessee was not aware and later collected the relevant documents from the official website of the CBDT. Hence, he raised this additional ground with a bonafide delay and moreover this being a legal issue it can be raised at any point of proceedings in our judicial system.

4. On the other hand, Ld. CIT(DR) contested the admissibility of additional ground, but could not controvert either the arguments on legal issue or that fact are not available.

5. After hearing both the sides on the above additional ground, we are consensus of the fact that assessee is raising this purely legal ground which goes to the root of the matter and no new facts are to be investigated or brought on record which are already available. Ld. Counsel for the assessee has argued that the legal issue can be raised at any point of time and thus, this issue stand covered by the decisions of the Hon'ble Supreme Court in the cases of Varas International (Supra) and NTPC (Supra). Hence, the aforesaid Additional Ground being purely legal in nature, we admit the same and adjudicate accordingly.

6. The brief facts of the case relating to the above issue that after the completion of assessment, the PCIT invoked the powers u/s. 263 of the Act for revising the assessment by issuing show cause notice to the assessee and proposed to revise the

assessment order. The assessee has filed the Dates and Events which goes to the root of the matter read as under:-

DATE	EVENT	Remarks
07.11.2022	Return of Income was filed declaring an Income of Rs 1,62,94,36,268/-	Admitted fact
01.06.2023	Notice under section 143(2) of the Act has been issued to the assessee.	Admitted fact
20.06.2023	ROI filed by assessee was processed under section 143(1) of the Act	Admitted fact
13.06.2023	Notice under section 142(1) of the Act, seeking various details with respect to the issues for which assessment has been	Admitted fact - See Pg number 150-153 of Paper book.
26.06.2023	Assessee filed part reply in pursuance to the questionnaire issued by the AO	See Pg number 154-160 of PB
28.06.2023	Assessee filed another reply in pursuance to the questionnaire issued by the AO	See page number161-165 of the PB
20.09.2023	Another notice under section 142(1) of the Act has been issued to the assessee	See page number 166-169 of PB
03.01.2024	Another notice under section 142(1) of the Act has been issued to the assessee	Page number 174-177 of PB
17 02 2023	Another notice under section -142(4) of- the Act has been issued to the assessee	-Page number 182-184 of PB
05.03.2024	Another notice under section 142(1) of the Act has been issued to the assessee	Page number 200-205 of PB
22.03.2024	Another notice under section 142(1) of the Act has been issued to the assessee	Page number 215-218 of PB
28.03.2024	Assessment under section 143(3) has been framed	Admitted fact
16.02.2026	Hon'ble ITAT has passed the order in the case of assessee with respect to AY 2020-21. The Hon'ble ITAT has decided the issue of notional ALV vis-à-vis all the	Admitted fact copy of the ITAT order is .there in Paper Book from Page number 228-249.
26.02.2026	CBDT vide office order number 35 of 2026 promoted certain officers as CC of the Income Tax, in this notification/ order the name of the PCIT, who has initiated proceedings against the assesse is also	See Page No 5 annexed with this synopsis
27.02.2026	PCIT issued show cause notice to assessee asking why the order of the AO shall not be declared as erroneous and	See Pg. No-39 Annexure- 2 of the appeal memo.
11.03.2026	Assessee filed detailed reply to the SCN and contended that the order of the AO is neither erroneous nor prejudicial to the	See Pg No-39 of PB

27.03.2026	PCIT passed the order against the assessee without even discussing about the verdict of ITAT order.	Admitted fact

Aggrieved with the order of the PCIT assessee is in appeal before us.

7. At the time of hearing, Ld. Counsel for the assessee in view of the above Dates and Events, contended that he has raised the additional ground that the revisional order passed by the PCIT is void ab inito as the same has been passed by the officer designated as CCIT stepping into the shoe of the PCIT without any authority of law.

8. Ld. CIT-DR relied upon the order of the Ld. PCIT.

9. We have heard the rival contentions and gone through the facts and circumstances of the case. From perusal of above sequence of event would show that the PCIT has issued the notice after he becoming the Chief Commissioner(CC). In other words, the show cause notice dated 27.02.2026 has been issued by a person who was holding the charge of CCIT(OSD) and has used the signature of PCIT-12. It is also noted that vide order of CBDT NO. 35 of 2026 dated 26.02.2026, in Para-2, it has been clearly provides that *"on promotion, above mentioned officers shall continue to hold the charge of the post, which they were holding before promotion, till their formal posting is ordered".* Meaning thereby the moment formal posting is ordered the officer will discontinue the erstwhile charge. Not only this the officer has also joined the formal posting on the same day as evident from the reply received by assessee from CBDT under RTI. In view of the above, factual matrix, the impugned notice was without jurisdiction. There is no doubt that section 263 of the Act empowers the CC to exercise the powers under this section. However, in that case the notice must be issued by the authority in the capacity of CCIT and not in the capacity of PCIT. However, even an officer higher in hierarchy can perform the functions of a junior officer, provided there has to be some order of the CBDT u/s 120(2) of the Act:-

> Section 116 describe the various authorities under the Act and as per the provisions of section 116(b) Director General of Income Tax or Chief Commissioner of Income Tax are the synonyms for each other and interchangeable terms. However, the Principal Commissioner is not synonym of Chief Commissioner and the same is defined in section 116(c) which provides that Directors of Income Tax or Commissioner of Income Tax. Similarly, the definition clause of section 2 defines and distinguish Chief Commissioner and Commissioner. Section 2(15A) provides who will be chief commissioner and section 2(16) provides who will be the Commissioner of Income Tax.

10. As per the provisions of section 120(2) of the Act any other authority can exercise the powers of other provided there has to be some express order by the CBDT which order is not there in the present case. We also note that it is settled position of law and is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some other manner only, reliance can be placed on the following judgments.

1. SPL Sidhartha Ltd reported in 345 ITR 223(Del) : lt was a case where the approval as per the provisions of section 151 of the Act was to be granted by Additional CIT. However the AO has taken approval from CIT instead of Additional CIT. The Hon'ble Court has observed as under: -

7. Section 116 of the Act also defines the Income Tax Authorities as different and distinct Authorities. Such different and distinct authorities have to exercise their powers in accordance with law as per the powers given to them in specified circumstances. If powers conferred on a particular authority are arrogated by other authority without mandate of lav/, it will create chaos in the administration of law and hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority. It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some other manner. It was so held in the following decisions:

(i)CIT Vs. Naveen Khanna (dated 18.11.2009 in ITA No.21/2009 (DHC). (ii)State of Bihar Vs. J.A.C. Saldanna & Ors. AIR (1980) SC 326.
(lii)State of Gujarat Vs. Shantilal Mangaldas, AIR (1969) SCN 634.

8. Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should now settled. In Sheo Narain Jaiswal & Ors. Vs. ITO, 176 ITR 35 (Pat.), it was held:

"Where the Assessing Officer does not himself exercise- his jurisdiction under- Section 147 but merely acts at the behest of any superior authority, it must be held that assumption of jurisdiction was bad for non- satisfaction of the condition precedent."

5. The Apex Court in the case of Anirudh Sinhji Karan Sinhji Jadeja Vs. State of Gujarat, (1995) 5 SCO 302 has held that If a statutory authority has been vested with Jurisdiction, he has to. exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether.

6. We are, therefore, of the opinion that the Tribunal has rightly decided the legal aspect, keeping in view well- established principles of law laid down in catena of judgments including that of the Supreme Court.

11. We further note that similar view has been taken by the Hon'ble Bombay High Court in the case of Ghanshyam K Khabrani Vs ACIT (2012) 346 ITR 443(Bom) wherein it has been observed Head Notes as u*nder:-*

"6. The second ground upon which the reopening is sought to be challenged is that the mandatory requirement of s. 151(2) has not been fulfilled. Sec. 151 requires a sanction to be taken for the issuance of a notice under s. 148 in certain cases. In the present case, an assessment had not been made under s. 143(3) or s. 147 for asst, yr. 2004-05. Hence, under sub-s. (2) of s. 151, no notice can be issued under s. 148 by an AO who is below the rank of Jt. CIT after the expiry of 4 years from the end of the relevant assessment year unless the Jt. CIT is satisfied, on the reasons recorded by such AO, that it is a fit case for the issue of such notice. The expression "Jt. CIT" is defined in s. 2(28C) to mean a person appointed to be a Jt. CIT or an Addl. CIT under s. 117(1). In the present case, the record before the Court indicates that the AO submitted a proposal on 28th March, 2011 to the CIT-1,Thane through the Addl. CIT Range-1, Thane. On 28th March, 2011, the Addl. CIT forwarded the proposal to the CIT and after recording a gist of the communication of the AO stated that:

> *"As requested by the AO. Necessary approval for issue of notice under s. 148 may kindly be granted in the case, if approved."*

On this a communication was issued on 29th March, 2011 from the office of the CIT- 1 conveying approval to the proposal submitted by the AO. There is merit in the contention raised on behalf of the assessee that the requirement of s. 151(2) could have only been fulfilled by the satisfaction of the Jt. CIT that this is a fit case for the issuance of a notice under s. 148. Sec. 151(2) mandates that the satisfaction has to be of the Jt. CIT. That expression has a distinct meaning by virtue of the definition in s. 2(28C). The CIT is not a Jt. CIT within the meaning of s. 2(28C). In the present case, the Addl. CIT forwarded the proposal submitted by the AO to the CIT. The approval which has been granted is not by the Addl. CIT but by the CIT. There is no statutory provision here under which a power to be exercised by an officer can be exercised by a superior officer. When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to *be done in a particular manner, it has to be done in that manner. In a similar situation the Delhi High Court in CIT vs. SPL's Siddhartha Ltd., IT Appeal No. 836 of 2011, decided on 14th Sept., 2011 [reported at (2012) 249 CTR (Del) 357; (2012) 70 DTR (Del) 133 – Ed.] held that powers which are conferred upon a particular authority have to be exercised by that authority and the satisfaction which the statute mandates of a distinct authority cannot be substituted by the satisfaction of another. We are in respectful with the judgement of the Delhi High Court."*

12. In terms of above factual matrix and keeping in view the aforesaid legal position explained, the impugned notice is without jurisdiction and thus bad in law and also its consequent revisional order of the PCIT is not sustainable in the eyes of law, hence, the same is quashed on this legal issue and accordingly, the additional ground raised by the assessee is allowed in the manner as aforesaid.

13. Coming on the merits of the case, it is noted that assessee is an individual and a designated Senior Advocate. Assessee is primarily practicing before the Supreme Court of India and various High Courts, all over the country. The assessee has also served Union of India as Attorney General. The return of the assessee was selected for scrutiny and assessment under section 143(3) of the Act has been framed by the Assessing Officer vide order dated 28.03.2024. Assessing Officer made a disallowance of Rs. 1,76,30,842/- u/s. 14A read with rule 8D of the Act. Against the additions made by the Assessing Officer, assessee filed the appeal before the CIT(A) and CIT(A) has allowed the appeal of the assessee. However, after the completion of assessment, the PCIT invoked the provisions of section 263 of the Act and issued a show cause notice to the assessee proposing to revise the assessment order and in response to the same, assessee filed detailed reply and contended that the assessment order is neither erroneous nor prejudicial to the interest of revenue. But, PCIT without refuting the averments made and without conducting any enquiry on his own has held that order of the AO is erroneous and prejudicial to the interest of revenue, against which the Assessee is in appeal before us.

14. Ld. AR for the assessee submitted that Assessing Officer has duly investigated the matter and assessee has filed replies to the queries of the Assessing Officer along with substantial evidences and orders of previous years in the case of the assessee, wherein most of the issues have already been decided by the ITAT or Assessing Officer. Submitted that out of total 11 properties, these 3 properties are simple plots for which there can be no ALV. For the property of Noida there is no quarrel between the assessee and the revenue as the assessee has already offered the legitimate ALV. So far as other properties are concerned - property at Goa, properties at London,

property at Muktesh war, Dubai and Sunder Nagar, all are examined by the ITAT in previous year.

S.No.	Property details	ITAT order Page number-
1	Goa property	Internal page -10(para-21)
2	London	Internal page-9 (Para-18)
3	Mukteshwar	Internal page-15(para-32)
4	Shaoorpur	Internal page -12 para25

Ld. AR for the assessee further submitted that the Ld PCIT has gone to some other properties related to the family member of the assessee, ignoring that the assessee was not owner of these properties in law, and hence the assessee was not obliged to disclose these properties in his Return of Income. It is pertinent to mention here that so far as the properties disclosed by assessee in AL Sch. there cannot be any second opinion. Hence the view of the A.O is justifiable.

15. It is submitted that the duty of the A.O is to examine the ROl of assessee and the subject matter of the assessment would be limited to the ROl and if there is any information with revenue that the assessee has masked some income or properties from revenue, due to which there is a loss to Revenue, then there are other remedy in law. Because it is settled position of law that PCIT cannot enlarge the scope of assessment

16. It is submitted that in Para 5.1 at internal page number-4 of the show cause notice (running page number 42 of the appeal memo) the PCIT has observed that for one of the property at London the assessee has not shown any ALV, despite the fact that the assessee has shown ALV in immediately previous years. In this regard it is submitted that the property was acquired on 16.08.2019, that is relevant to AY 2020-21. In that year the assessee has offered an amount of Rs 3.50 lakhs as ALV attributable to this property. And in next AY 2021-22 the assessee has also offered the ALV at Rs 6 lakhs. In AY 2020-21 and AY2021-22, the assessee was sole owner and thereafter the assessee distributed shares of this property in favour of his wife and sons. It is the allegation of the PCIT that during year under consideration the assessee

has not offered any ALV, and hence order of the AO is not correct. In this regard it is submitted that :

a. In the initial year the property was not fully developed for using the same as office further only for six month from acquisition, assessee has offered a ALV.
b. ITAT has also examined this issue in assessee own case for AY 2020-21 and held that ALV shown is correct. Further ITAT also noted that the property was used for business purposes.
c. So far as AY 2021-22 is concerned the assessee has offered an amount of Rs 6 lakhs as ALV of this property. However, that doesn't mean that the property was not used for office purposes. In fact, when the Apex Court of India, declares holidays in June, assessee is going to London and operating his office from London and doing cases before the High Courts via virtual mode. Further merely because assessee has offered ALV of such property which is commercially exploited by him that would be a mistake and that mistake cannot bind the assessee, particularly a Senior lawyer to repeat the same. There is no estoppel against statute. It is settled position of law that if something is not taxable in the eyes of law then the same cannot be made taxable merely because an assessee has offered the same for taxation, reference can be made to the judgment of Mayank Podddar HUF reported in 262 1TR 633(Cal) and J Mitra reported in 73 Taxman 437(Cal). Another judgment which is relevant is Baroda Distributor which says ***that to perpetuate an error is no heroism 155ITR 120(SC).***

17. It is further submitted that from Para 5.2 to 5.5 the PCIT has commented on the issue of ALV of those properties which were already examined by the ITAT in previous AY 2020-21. In Para 5.6 of the Show cause notice, the PCIT after comparing the AL schedule and FA (Foreign Assets) schedule has alleged that the assessee was owing two flats (1901 and 1902) in Dubai but has shown only one in ITR. The fact of the matter is that assesse is owing only one flat i.e. flat number 1901. However, due to

some typo error this mistake has occurred. It is submitted that while filing the reply before the PCIT, assessee has clarified the fact vis-à-vis mistake happened. Assesse also explained to the PCIT that assessee was using that Dubai property for conference and office purposes. However, no weightage has been given to submissions.

18. It was the contention of the Ld. AR that in para 5.7 the PCIT has alleged that property of Jor bagh has been transferred by the assessee to his wife by way of gift and as per the provisions of 64(1)(iv) read with 27(i) of the Act the ALV of this property is to be assessed in the hands of assessee. The PCIT has also commented that even the wife has not shown any ALV from this property. It is submitted that both assesses and his wife are in same tax bracket therefore clubbing provisions would not apply. Further the wife of the assessee is also a practising advocate and hence she could not show any income from this property as she was having officer here. The other properties discussed by the PCIT in Para 5.8 and 5.9 have already been held to be occupied professionally by the ITAT(see page number- 242 of PB- internal page 15 of the ITAT order).

19. It is further submitted that while passing the order u/s 263 of the Act, the PCIT has alleged that before the AO the assessess has submitted list of only few premises used by him for carrying out the profession. And the AO failed to take necessary action with respect to the other properties. In this regard it is submitted that the list of the properties submitted by assesses before the AO is of those properties which are exclusively used by assesse for his profession. The other properties are in the name of spouse and children which they have shown in their respective returns. They are also professionals and carrying out profession independently from these properties.

20. On the issue of notional ALV, it is submitted by the Ld. AR that in the impugned year and immediately previous assessment year falls under the covid-19 period (that is march 2020 to march 2022). It is submitted that all the courts were functioning in hybrid mode at that point of time, even judges were conducting the courts from the residences. It is pertinent to mention here that in order to provide

justice to the people of India thousands of cases had been decided via hybrid mode from various courts in India. The assessee has also used his remote accommodations for conducting the hearing of courts for example the assessee has utilised his office situated at Muktasehwar farm house during covid -19 period and income accrues to assessee via those matters have been duly offered for taxation. It is submitted that the assessee is one of most prominent lawyer of India having more than 150 juniors all over the country. Similarly, assessee is maintaining various offices all over the country and earning well and offering that income for taxation. It is worthy to mention here that during vacation time of supreme court assessee spent most of his time in London and present matters to other various high courts of this country via virtual mode. It is a known fact that the vacation period of all High Courts are different in India for example Bombay and Gujarat mainly remain on vacation from 10^{th} may to 10^{th} June, so assessee keeps on presenting matters to other forums of the country via his properties. In other words, the case of the assessee is squarely falls under the provisions of section 22 of the Act which provides that no ALV is required to be offered if the property is used for carrying on the profession.

21. Further the growth in professional receipt of the assessee would prove beyond doubt that the assessee is utilising the properties for his professional works. It is further pertinent to mention here that profit margin of the assessee is very meagre and the assessee is paying maximum tax out of his professional receipt therefore no prudent person would invite problem to himself by not declaring a small value of notional ALV. This aspect would have been considered by the PCIT before assuming jurisdiction of 263 of the Act.

22. It is submitted that this submission along with supportive evidences has been duly submitted with AO and then the AO has taken a plausible view. The assessee also submitted before the PCIT regarding the non-applicability of provisions of ALV and provisions of section 22 of the Act**.** However, the PCIT without refuting the averments made and without conducting any enquiry on his own has held that order of the AO is erroneous and prejudicial to the interest of revenue. The PCIT has taken the shelter of explanation -2 of section 263 of the Act. It is submitted that the coordinate Bench of the ITAT in the case of D.K. Associates in ITA number 5659/Mum/2016 dated 16.01.2017 has thread barely examined the applicability of explanation 2 of section 263 of the Act and has held that the PCIT cannot go away by simply relying

on explanation 2 and it is the duty of the PCIT to conduct necessary enquiries on his own before declaring the order of the AO erroneous. Relevant observations of the Bench are as under: -

> *10.4 We have examined Explanation 2 to section 263 which is inserted by the Finance Act, 2015 with effect from 01/06/2015. This explanation empowers the CIT from 01.06.2015 to invoke the provision of section 263 to the assessment order to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Principal CIT-.*
>
> (a) *the order is passed without making inquiries or venfication which should have been made;*
>
> (b) *the order is passed allowing any relief without inquiring into the claim;*
>
> (c) *the order has not been in accordance with any order, direction or instruction issued by the Board under section 119; or*
>
> (d) *the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. "*
>
> *11. No doubt clause (a) of this explanation deems the order to be erroneous and prejudicial to the interest of the revenue in case order is passed without making enquiries or verification which should have been made in the opinion of the Principal Commissioner or Commissioner. In our opinion, for the applicability of clause (a) of Explanation, it is necessary that the Principal Commissioner must mention in the order what inquiries or verification the Principal Commissioner desires-to have been carried out by the Assessing Officer. The Principal Commissioner in this case even though stated that the Assessing Officer failed to examine during the course of the assessment proceedings the affect of change in the accounting policy on the Revenue not disclosed by the assessee but did not point out what type of inquiry or verification should have been carried out in this regard by the AO. How non examination of this aspect has resulted in under assessment. The order passed by the AO, in our opinion, shall be deemed to be erroneous in so far as prejudicial to the interest of the Revenue if the Principal Commissioner would have specifically pointed out which of the inquiries or verification should have been carried out by the AO in this regard and the AO failed to carry out those inquiries and verification as desired by the Principal Commissioner. Since the Principal Commissioner has not suggested the basis of the inquiry or verification to be carried out by the AO, the order passed by the AO cannot be deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue*

23. It is further submitted that coordinate bench of the ITAT, in assessee's own case in ITA Number -2427/Del/2025 vide order dated 16.02.2026 has also held that the assessee is not liable to pay any tax on account of notional ALV vis-à-vis such properties from where the assessee has carried out the profession. In view of above, Ld. AR has submitted that addition in dispute may be deleted.

24. On the other hand, Ld. CIT-DR relied upon the order of the PCIT.

25. We have heard the rival contentions and gone through the facts of the present case on merit as well. In the instant assessment year 2022-23, the assessee filed his return of income under section 139(1) of the Act on 07.11.2022 declaring total income of Rs. 161,60,86,270/-. The case of the assessee was selected for scrutiny, and the assessment was completed u/s. 143(3) read with section 144B of the Act vide order dated 28.3.2024 wherein the Assessing Officer examined the list of properties and ALV and after due inquiry and verification of records, he accepted the assessee's position that the properties were used for business purposes. Subsequently, the PCIT issued a show cause notice under section 263 of the Act dated 27.2.2026, alleging that the assessment order was erroneous and prejudicial to the interests of the revenue, contenting that ALV ought to have been declared in respect of the aforementioned properties. During the relevant previous year, the assessee owned multiple immovable properties, including those situated at London, Goa, Muktehwar, Dubai, Jor Bagh, Golf Links, and Sunder Nagar. Certain properties were wholly and exclusively used for the purpose of the assessee's professional activities, including conducting conferences, high level meetings, client counseling and other professional engagements, as well as for storing voluminous client records and legal documents and certain part of properties were transferred by way of gift to family members during the year. As far as first observation of the notice relating to holding of various properties and gifting of some of them to family members, it was the contention of the assessee that prior to A.Y. 2022-23, all these properties were in the name of the assessee and further the assessee has also gifted certain plots to his wife during the year, which were reflected in the books of account of assessee till A.Y. 2021-22, since the investments were made out of his professional income.

26. All these properties were duly disclosed and accounted for in the books of accounts and balance sheets of the assessee in earlier years. As regards another

observation in the notice regarding the London property, alleging that no capital gains have been offered is concerned, it is noted that the said property was transferred by way of gift to family members out of natural love and affection and without any consideration, and hence, no capital gains arise. Even the properties which were gifted to the spouse, the provisions relating to clubbing of income if applicable, do not result any taxable income under the head “income from house property”, as the properties were not let out and were either used for professional purposes or not capable of generating any ALV. The properties were genuinely and exclusively occupied for professional purposes, no ALV was declared or offered to tax under the head “income from house property” for these properties. In respect of properties gifted, assessee was no longer the owner, and therefore, no ALV was attributable or assessable in his hands. In the previous financial years, the assessee had voluntarily offered income from house property for these properties. In respect of properties gifted, the assessee was no longer owner and thus no ALV was attributable or assessable in the hands of the assessee.

27. Out of total 11 properties, 3 properties are simple plots for which there can be no ALV. For the property of Noida there is no quarrel between the assessee and the revenue as the assessee has already offered the legitimate ALV.

28. So far as other properties are concerned - property at Goa, properties at London, property at Mukteshwar, Dubai and Sunder Nagar, have been dealt by the ITAT in previous year. It is observed that PCIT has gone to some other properties related to the family member of the assessee, ignoring that the assessee was not owner of these properties in law. So far as the properties disclosed by assessee in AL Sch. there cannot be any second opinion. Hence the view of the A.O is justifiable. It is noted that PCIT has observed that for one of the property at London the assessee has not shown any ALV, despite the fact that the assessee has shown ALV in immediately previous years. However, it is noted that the property was acquired on 16.08.2019, that is relevant to AY 2020-21. In that year the assessee has offered an amount of Rs 3.50 lakhs as ALV attributable to this property. And in next AY 2021-22 the assessee has also offered the ALV at Rs 6 lakhs. In AY 2020-21 and AY2021-22, the assessee was sole owner and thereafter the assessee distributed shares of this property in favour of his wife and sons. It is the allegation of the PCIT that during year under

consideration the assessee has not offered any ALV, and hence order of the AO is not correct due to the fact that in the initial year the property was not fully developed for using the same as office further only for six month from acquisition, assessee has offered a ALV; ITAT has also dealt this issue in assessee own case for AY 2020-21 and held that ALV shown is correct. Further ITAT also noted that the property was used for business purposes; so far as AY 2021-22 is concerned the assessee has offered an amount of Rs 6 lakhs as ALV of this property. However, that doesn't mean that the property was not used for office purposes. In fact, when the Apex Court of India, declares holidays in June, assessee is going to London and operating his office from London and doing cases before the High Courts via virtual mode. Further merely because assessee has offered ALV of such property which is commercially exploited by him that would be a mistake and that mistake cannot bind the assessee, particularly a Senior lawyer to repeat the same. There is no estoppel against statute. It is settled position of law that if something is not taxable in the eyes of law then the same cannot be made taxable merely because an assessee has offered the same for taxation. It is observed that property of Jor Bagh has been transferred by the assessee to his wife by way of gift and as per the provisions of 64(1)(iv) read with 27(i) of the Act the ALV of this property is to be assessed in the hands of assessee. The PCIT has also commented that even the wife has not shown any ALV from this property. Further the wife of the assessee is also a practising advocate and hence she could not show any income from this property as she was having office here. It has been noted that while passing the order u/s 263 the PCIT has alleged that before the AO the assesses has submitted list of only few premises used by him for carrying out the profession. And the AO failed to take necessary action with respect to the other properties, in this regard it is noted that the list of the properties submitted by assesses before the AO is of those properties which are exclusively used by assesse for his profession. The other properties are in the name of spouse and children which they have shown in their respective returns. They are also professionals and carrying out profession independently from these properties.

29. On the issue of notional ALV, the assessee has utilised his office situated at Muktasehwar farm house during covid -19 period and income accrues to assessee via those matters have been duly offered for taxation. The case of the assessee is squarely falls under the provisions of section 22 of the Act which provides that no ALV is

required to be offered if the property is used for carrying on the profession. Further the growth in professional receipt of the assessee would prove beyond doubt that the assessee is utilising the properties for his professional works. It is noted that profit margin of the assessee is very meagre and the assessee is paying maximum tax out of his professional receipt. This aspect would have been considered by the PCIT before assuming jurisdiction of 263 of the Act. It is noted that this submission along with supportive evidences has been duly submitted with AO and then the AO has taken a plausible view. The assessee also submitted before the PCIT regarding the non-applicability of provisions of ALV and provisions of section 22 of the Act. However, the PCIT without refuting the averments made and without conducting any enquiry on his own has held that order of the AO is erroneous and prejudicial to the interest of revenue. It is the duty of the PCIT to conduct necessary enquiries on his own before declaring the order of the AO erroneous, which he has not done. It is further noted that coordinate bench of the ITAT, in assessee's own case in ITA Number - 2427/Del/2025 vide order dated 16.02.2026 has also held that the assessee is not liable to pay any tax on account of notional ALV vis-à-vis such properties from where the assessee has carried out the profession.

30. We are dealing with the properties shown by the assessee in AL Schedule of Balance Sheets for year under consideration as under:-

(1) Flat No. 19, Hirst Court Londal (Serial No. 1 of AL Schedule)

We note that similar property/issue has been dealt by the Tribunal vide its order dated 16.2.2025 in ITA No. 2427/Del/2025 (AY 2020-21) by holding as under:-

> *"18. We have considered the rival submissions and gone through the facts and circumstances of the case. We noted that this property was purchased by the assessee on 16^{th} August, 2019 and estimated the ALV for seven months at `3.50 lakhs and the PCIT has not given any basis for estimating the ALV at `32 lakhs except some screenshot of an AI overview, wherein average property yield in London was 4 to 6%. We are of the view that this cannot be the basis for estimating the ALV but it has to be based on some evidence, only then, the Assessing Officer can estimate the fair market value of the rent. Accordingly, in our view, the material was placed before the Assessing Officer declaring the ALV of the property at `3.50 lakhs for seven months and no fault was found by the Assessing Officer and hence, he accepted the same. It means that he has formed an opinion and that is one of the possible views."*

It is noted that assessee has disclosed ALV for six months in that year, however, for the impugned year the assessee has not shown any ALV. Since this property has been fully utilized for professional purposes and professional income attributable to Tribunal this property has been offered for taxation. Further there is substantial increase in professional receipts of the assessee which would justify the view of the Assessing Officer and it reveals that professional receipt of the assessee has been increased from Rs. 167 crore to Rs. 187 crore. Respectfully, following the aforesaid precedent in assessee's own case, we hold that once the property is utilized for commercial purposes, the same cannot be accounted for the purpose of ALV. In terms of above, we hold that Assessing Officer was correct.

(2) Flat No. 20 Hirst Court London, Serial No. 8 of AL Schedule

We note that similar property/issue has been dealt by the Tribunal vide its order dated 16.2.2025 in ITA No. 2427/Del/2025 (AY 2020-21) by holding as under:-

> *"13. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee before the Assessing Officer during the course of original assessment proceedings categorically stated that this property is exclusively used for professional purposes i.e., office of law where assessee frequently visits London for various conferences with clients and income from London office has also been received and declared by the assessee. We noted that this property is used for commercial purposes and hence, no ALV can be attributed to the same. This fact, although noted by the Assessing Officer, was canvassed before him and presumably he accepted the same. Even otherwise, on merits, once the property is utilized for commercial purposes, the same cannot be accounted for the purpose of ALV."*

In terms of above, it is held that once the property is utilized for commercial purposes, the same cannot be accounted for the purpose of ALV.

(3) Property located at Goa Serial No. 2 of AL Schedule

We note that similar property/issue has been dealt by the Tribunal vide its order dated 16.2.2025 in ITA No. 2427/Del/2025 (AY 2020-21) by holding as under:-

> *"19. Coming to the next property located at Goa at Ocean Park having Flat No.1 at Plot B-13, Bella Vista. The PCIT noted that this property was acquired by the assessee at a cost of `2,94,11,430/- and assessee is disclosing the ALV for this property at `1.20 lakhs only. The PCIT noted that since assessment year 2010-11, the ALV of this property has been disclosed on identical value of Rs. 10,000/- per month only and accordingly, the ALV of this property was required to*

be assessed, which the Assessing Officer failed to do so. According to learned PCIT, the Assessing Officer has not carried out any verification or enquiries and hence, in terms of Explanation 2(a) to Section 263 of the Act, the assessment order is deemed erroneous insofar as it is prejudicial to the interest of the Revenue due to lack of such enquiry/verification. Learned Counsel for the assessee stated that this property is being assessed regularly and assessee is declaring the ALV of this property at Rs. 1.20 lakhs and even in assessment year 2019-20, the same was accepted. Learned Counsel for the assessee stated that the PCIT has not given any finding what is the value and what is the fair market rent of this property. The details were already filed by the assessee before the Assessing Officer and the Assessing Officer, after noting all these facts, has not touched the ALV of this property. Learned Counsel further stated that the PCIT has not given any finding how the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue. Once the details are available before the Assessing Officer, he has formed an opinion taking a view that the ALV declared by the assessee is in terms of provisions of Section 23(1) of the Act.

20. On the other hand, learned CIT-DR heavily relied on the revision order and stated that the Assessing Officer can verify the fair market rent and therefore, reassess the ALV accordingly.

21. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has disclosed ALV of Goa Flat at `1.20 lakhs and this is assessed from assessment year 2011-12 and even in assessment year 2019-20, the ALV was accepted. This has been consistently declared by the assessee and accepted by the Revenue. Further, it is to be mentioned that the PCIT has not given any basis and how this ALV is not correct and without that, the order of the Assessing Officer cannot be treated as erroneous insofar as it is prejudicial to the interest of the Revenue. In terms of the above, we are of the view that the Assessing Officer has made enquiry into this and formed an opinion on the basis of declared ALV of the property. This is one of the possible views, which is adopted by the Assessing Officer."

It is noted that Assessee was showing ALV of this property up to AY 2021-22. However for the impugned year assessee has not shown any ALV, since the assessee starts using this property exclusively for professional uses. It is once again reiterated that there is no Estopple against the statute. This property was also used for conference purposes. PCIT ought to have brought some material on record to show that the view of the AO was not plausible, before taking the shelter of explanation-2 of section 263 of the Act. Further there is substantial increase in professional receipts of the assessee which would justify the view of the AO. For instance, the Professional receipt of the assessee has been increased from Rs. 167 Crore to Rs. 187 Crore. And the assessee has paid huge amount of tax instead of meagre amount of Rs 1,20,000/- ALV shown and accepted by ITAT. Further the PCIT has not brought any material by way of conducting enquiries on its own to prove that the view of the AO is not correct. In terms of the above, we are of the view that the Assessing Officer has made enquiry into this and formed an opinion on the basis of declared ALV of the property. This is one of the possible views, which is adopted by the Assessing Officer.

(4) Green Meadow Sahoopur, Serial No. 7 of AL Schedule

We note that similar property/issue has been dealt by the Tribunal vide its order dated 16.2.2025 in ITA No. 2427/Del/2025 (AY 2020-21) by holding as under:-

> *"25. The next property is a farm house located at Green Meadow Sahoopur, Delhi, for which the assessee has declared ALV of RS.8,71,141/- on deemed let out basis. The PCIT, on perusal of assessment records, noted that the cost of acquisition of this property is declared at Rs. 32,21,021/-. He also noted that this property is held by the assessee from assessment year 2010-11 and declared ALV for assessment year 2010-11 at Rs. 8,53,074/-. He stated that even after ten years, increase in ALV of only of 2% which is untenable and therefore, the ALV of this property was required to be assessed at prevailing market rates. According to PCIT, the Assessing Officer has not carried out verification or enquiry and hence, the order of the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the Revenue in terms of Explanation 2(a) to Section 263 of the Act.*
>
> *26. Learned Counsel for the assessee stated that this property is being assessed regularly and assessee is declaring the ALV of this property at Rs. 8,53,074/- and the same was accepted in the earlier assessment years. Learned Counsel for the assessee stated that the PCIT has not given any finding what is the value and what is the fair market rent of this property. The details were already filed by the assessee before the Assessing Officer and the Assessing Officer, after noting all these facts, has not touched the ALV of this property. Learned Counsel further stated that the PCIT has not given any finding how the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue. Once the details are available before the Assessing Officer, he has formed an opinion taking a view that the ALV declared by the assessee is in terms of provisions of Section 23(1) of the Act.*
>
> *27. On the other hand, learned CIT-DR relied on the revision order and stated that the Assessing Officer has simply accepted the ALV without any basis.*
>
> *28. We have heard rival contentions and have gone through the facts and circumstances of the case. We noted that the assessee has disclosed ALV*

of this farm house property at Sahoopur, New Delhi and this is being assessed and accepted from earlier years. This has been consistently declared by the assessee and accepted by the Revenue. We have gone through the case records including the revision order and could not find any observation by the PCIT that what should be the basis for ALV and how the ALV declared by the assessee is not correct and without that, the order of the Assessing Officer cannot be treated as erroneous insofar as prejudicial to the interest of the Revenue. In terms of the above, we are of the view that the Assessing Officer has made enquiry into this and formed an opinion on the basis of the declared ALV of this property. This is one of the possible views which is adopted by the Assessing Officer."

It is noted that Assessee was showing ALV of this property up to AY 2021-22. However for the impugned year assesses has not shown any ALV, since the assessee starts using this property exclusively for conducting conferences at weekends. It is once again reiterated that there is no Estopple against the statute. Further, there is substantial increase in professional receipts of the assessee which would justify the view of the AO. For instance, the Professional receipt of the assessee has been increased from Rs. 167Crore to Rs. 187 Crore. Further the PCIT has not brought any material by way of conducting enquiries on its own to prove that the view of the AO is not correct. In terms of the above, we are of the view that the Assessing Officer has made enquiry into this and formed an opinion on the basis of the declared ALV of this property. This is one of the possible views which is adopted by the Assessing Officer is correct.

(5) Property at Muktheswar Serial No. 3 of AL Schedule

We note that similar property/issue has been dealt by the Tribunal vide its order dated 16.2.2025 in ITA No. 2427/Del/2025 (AY 2020-21) by holding as under:-

"29. The next property is located at Mukteshwar Garh, UP as per Schedule AL for assessment year 2020-21. According to the PCIT, the cost of acquisition of this property is at Rs. 1,93,26,447/- and assessee has declared ALV at Rs. 1,20,000/- per annum, which is extremely low ALV on deemed basis. According to the PCIT, the Assessing Officer has not carried out any enquiry and therefore, this issue on which verification or enquiry has not been conducted by the Assessing Officer, the assessment order becomes erroneous insofar as it is prejudicial to the interest of the Revenue in terms of Explanation 2(a) to Section 263 of the Act.

30. Learned Counsel for the assessee stated that this property is being assessed regularly and assessee is declaring the ALV of this property at `1,20,000/- and the same was accepted in the earlier assessment years.

> *Learned Counsel for the assessee stated that the PCIT has not given any finding what is the value and what is the fair market rent of this property. The details were already filed by the assessee before the Assessing Officer and the Assessing Officer, after noting all these facts, has not touched the ALV of this property. Learned Counsel further stated that the PCIT has not given any finding how the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue. Once the details are available before the Assessing Officer, he has formed an opinion taking a view that the ALV declared by the assessee is in terms of provisions of Section 23(1) of the Act.*
>
> *31. On the other hand, learned CIT-DR relied on the revision order and stated that the Assessing Officer has simply accepted the ALV without any basis.*
>
> *32. We have heard rival contentions and have gone through the facts and circumstances of the case. We noted that the assessee has disclosed ALV of this farm house property at Mukteshwar Garh, UP at Rs. 1,20,000/-, and this is being assessed and accepted from earlier years. This has been consistently declared by the assessee and accepted by the Revenue. We have gone through the case records including the revision order and could not find any observation by the PCIT that what should be the basis for ALV and how the ALV declared by the assessee is not correct and without that, the order of the Assessing Officer cannot be treated as erroneous insofar as prejudicial to the interest of the Revenue. In terms of the above, we are of the view that the Assessing Officer has made enquiry into this and formed an opinion on the basis of the declared ALV of this property. This is one of the possible views which is adopted by the Assessing Officer."*

It is noted that Assessee was showing ALV of this property up to AY 2021-22. However for the impugned year assessee has not shown any ALV, since the assessee starts using this property exclusively for conducting conferences during Holidays. It is once again reiterated that there is no Estopple against the statute. Further there is substantial increase in professional receipts of the assessee which would justify the view of the AO. For instance, the Professional receipt of the assessee has been increased from Rs. 167 Crore Rs. 187 Crore. And the assessee has paid huge amount of tax instead of meagre amount of Rs 1,20,000/- ALV shown and accepted by ITAT. Further the PCIT has not brought any material by way conducting enquiries on its own to prove that the view of the AO is not correct. The PCIT has also not pondered as to how much would be the ALV of the property and why the view of the AO is plausible having regard to the increase in professional receipts. In terms of the above, we are of the view that the Assessing Officer has made enquiry into this and formed an opinion on the basis of the declared ALV of this property. This is one of the possible views which is adopted by the Assessing Officer is correct.

(6) Property at Noida serial no. 9 of the AL Schedule. In this property there is no quarrel on this issue as the assessee has duly disclosed the ALV by way of actual rent received.

(7) Property at Dubai Serial No. 10 of AL Schedule. This property was not there in the previous year. However, the ITAT principally, accepted the contention of the assessee, in previous year that if property has been used for carrying out profession then no ALV is required to be offered in terms of section 22. It is pertinent to mention here that assessee is using this Dubai property for carrying conferences in winters holidays of Supreme Court. Assessee has also shown substantial professional receipts attributable to this property. Further the ITAT in previous year has categorically held no ALV is applicable to such properties which are commercially used and once the property is commercially used, the same cannot be accounted for the purpose of ALV. Therefore, it is a case where the Assessing Officer has taken a view based upon a binding opinion and not unsustainable opinion.

(8) Property in AL Schedule at Serial No. 11 – being 59, Sunder Nagar. This the main office of the assessee from where assessee has been carrying on profession. This property was not there in the previous year as the same was accepted by the department as office cum residence of the assessee. It is noted that PCIT has forgot that every assessee before the amendment was entitled for one property and after amendment effective from F.Y. 2023-24 every assessee has enjoy two properties without ALV. Hence this property being 59, Sunder Nagar, where assessee and his other family member are residing would not attract any ALV. Thus, the view of the AO is legally tenable in the eyes of law.

31. In the background of the aforesaid factual matrix, we note that all the aforesaid properties have been duly disclosed by the assessee in his return of income in “AL” Schedule and most of the properties were there before the ITAT in previous years and assessee has also shown some ALV from few of them. However, from the instant assessment year assessee discontinued to disclose any ALV from these properties for the reasons that assessee is a renowned Senior Advocate having team of

150 juniors all over the world and these juniors require space for sitting and also space for keeping books and other accessories, which the assessee was providing from these premises. Further, the income of the assessee has been substantially from Rs. 167 crore to Rs. 187 crore, resultantly, the assessee has paid more taxes on the income accrued to him instead of showing the ALV and having benefit of 30% deduction. Further, the assessee gifted the properties to other family members and the same were not owned by him. Even otherwise before the transfer of the properties to the family members the assessee was the owner and has utilized these properties for carrying out the profession. Therefore, we are of the considered view that Assessing Officer had made adequate inquiry and taken a plausible view and the properties were genuinely and exclusively used for business / professional purposes. The gifted properties were no longer owned by the assessee. It is noted that no actual income under the head "income from house property" arises. The section 263 revision is based on mere change of opinion, which is not sustainable in the eyes of law. It is noted that PCIT has invoked the revisional jurisdiction by alleging that the Assessing Officer failed to make proper inquiries. However, Explanation 2 to Section 263 of the Act, which deems an order to be erroneous in case of lack of inquiry or verification, applies only where no inquiry whatsoever has been conducted. However, in the present case, the Assessing Officer has made specific inquiries regarding the properties, their usage, and the treatment under the head "income from house property", and the assessee has duly furnished all the relevant details, thus, it cannot be said that the order has been passed without inquiry or verification. Therefore, there is no error in the order of the Assessing Officer which would be prejudicial to the interest of revenue. Even otherwise, the PCIT was unable to point out as to how the view of the Assessing Officer is erroneous or what more enquiries the Assessing Officer would have conducted. In view of the above discussion on facts and legal precedents, we are of the view that there is no material available with the learned PCIT for revision of assessment order under Section 263 of the Act, which enabled him to form a prima-facie opinion that the assessment order passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the Revenue. On the issue of ALV of various properties the revision order of learned PCIT lacks any material and hence, does not stand the test of the law. Accordingly, we quash the revision order.

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

Decision pronounced in the open Court on 28th August, 2026.

Sd/- Sd/-

(SANJAY AWASTHI)
ACCOUNTANT MEMBER

(MAHAVIR SINGH)
VICE PRESIDENT

Date:28-08-2026

SR BHATNAGAR

Copy forwarded to: -

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

Assistant Registrar