

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.2427/Del/2025
Assessment Year : 2020-21

Shri Mukul Rohatgi,
65, Golf Links,
New Delhi – 110 003.
PAN : AACPR4789B.

Vs. Principal Commissioner of
Income Tax,
Delhi-12.

(Appellant)

(Respondent)

Appellant by : Shri Sachit Jolly, Senior Advocate
and Ms. Mansha Aanad, Advocate.
Respondent by : Shri Jitender Singh, CIT-DR.

Date of hearing : 04.12.2025
Date of pronouncement : 16.02.2026

ORDER

PER MAHAVIR SINGH, VP

This appeal by the assessee is arising out of the revision order passed under Section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the learned Principal Commissioner of Income Tax, Delhi-12 (hereinafter referred to as 'PCIT') for the assessment year 2020-21. Assessment was completed by the Assessing Officer of NFAC under Section 143(3) read with Section 144B of the Act vide Order dated 28th September, 2022.

2. The assessee is a designated Senior Advocate and practices law before Hon'ble Supreme Court of India. Original assessment was completed by the Assessing Officer under Section 143(3) read with Section 144B of the Act, whereby, the Assessing Officer assessed the

assessee at an income of ₹133,46,92,080/- after making addition of ₹44,77,708/- on account of disallowance under Section 24(b) of the Act and also disallowed a sum of ₹40,10,848/- under Section 14A read with Rule 8D of the Income-tax Rules, 1962 (hereinafter 'the rules'). The PCIT called and examined the records and accordingly, notice under Section 263 of the Act dated 11th March, 2025 was issued, giving show cause notice with intent to revise the assessment under Section 263 of the Act.

1st issue - Taxability of various funds held by the assessee and sold during the year, whether to be taxed on long term capital gain basis or short term capital gain basis.

3. At the time of hearing before us, learned Senior Advocate raised the first issue on merits, which is as regards the long term capital gain proposed to revise it to short term capital gain to be taxed at normal rate instead of special rate of 10%. The PCIT also proposed for recomputation/revision of assessment of long term capital gain under Section 112A of the Act to the extent of 80,42,324/-. Learned Counsel for the assessee, first of all, took us through the revision order passed by the learned PCIT paragraph 5, wherein the various equity funds are noted by the PCIT and, according to the PCIT, the equity funds are *prima-facie* not equity-oriented funds and hence, these are taxable at a normal rate instead of taxation under Section 112A of the Act. Learned Counsel for the assessee stated that the below-mentioned six long term funds are equity-oriented funds, and this can be verified from the computation of income filed by the assessee and the returns of income and even the documents filed during the course of hearing of original assessment i.e., capital gains statement given by Axis Dynamic Equity Fund, BNP Paribas Liquid Fund, DSP BlackRock Dual Advantage Fund, ICICI Prudential Regular Gold Savings Fund, SBI Gold Fund Regular Plan and Tata Income Fund Regular Plan. He pointed out

from the computation of long term capital gain chart filed before us, which was also before the Assessing Officer, wherein ISIN Code of each fund is provided and stated that all these funds are equity-oriented funds and the observations of PCIT are not as per law. According to learned Counsel, these details were filed before the Assessing Officer during original assessment proceedings and were properly examined, and thereafter reached to a conclusion that these funds are actually equity-oriented funds. According to the learned Counsel, these equity-oriented funds are being held by the assessee for more than one year and accordingly, these are to be taxed at special rate of taxation at 10% under Section 112A of the Act. Learned Counsel pointed out from the PCIT's order wherein complete chart of the six equity-oriented funds are mentioned at pages 10 & 11 of the impugned order. He only stated that the cost of acquisition of SBI Gold Fund, which is declared at purchase price, which can be verified by the Assessing Officer. Learned Counsel for the assessee Shri Jolly pointed out, that, first of all, the assessee has correctly declared these funds as equity-oriented funds and the Assessing Officer, during the course of original assessment proceedings, examined these in detail as assessee has filed complete details before the Assessing Officer during scrutiny assessment.

4. On the other hand, learned CIT-DR argued that the Assessing Officer has not carried out verification and the PCIT, in terms of Explanation to Section 263 of the Act, has rightly revised the assessment order and directed the Assessing Officer to redo the assessment after verification.

5. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the PCIT, on examination of assessment records, noted that the assessee has declared long term capital gain on sale of various funds under Section 112A of the Act but,

on perusal of the list of funds provided by the assessee, learned PCIT noted that the nature of all funds was not equity-oriented funds and once these are not equity-oriented funds, these are not to be taxed under special rate of taxation under Section 112A of the Act, rather, these will be taxed under normal rate of tax. The PCIT recomputed the short term capital gain on the six funds as the assessee has held these funds for less than 36 months and thereby computed short term capital gain at ₹1,27,22,989/- . The PCIT also directed the Assessing Officer to reduce the long term capital gain to ₹80,42,324/- as against declared by the assessee at ₹89,46,691/- . According to the PCIT, these funds are not equity-oriented funds and hence, these are to be taxed on normal rate of taxation and directed the Assessing Officer accordingly.

6. We have gone through the submissions of both the sides i.e., the learned Counsel for the assessee as well as learned CIT-DR and also perused the material placed before us. From the details filed by the assessee of these six growth funds, clearly, these are equity funds as noted in the statement issued by all the funds, the copies of which are enclosed by the assessee in his paper books. For example, we noted that the first fund is Axis Dynamic Equity Fund-Direct Plan-Growth(1) and the code of which i.e., ISIN code is INF846K01 A29. The code indicates that this is clearly equity-oriented fund and even the holding period is also more than one year and once it is equity-oriented fund, the assessee should be taxed on special rate under Section 112A of the Act, which the assessee has rightly declared. We also noted that these details were filed by the assessee before the Assessing Officer during the course of scrutiny assessment and the Assessing Officer, after examining all these details, reached to a conclusion that these are equity-oriented funds and he formed an opinion and that is one of the possible opinions. At the time of hearing, learned Counsel for the

assessee agreed that the figure of purchase of SBI Gold Fund can be verified by the Assessing Officer and the assessee will file the complete details before the Assessing Officer in this regard.

2nd Issue – Annual Letting Value of various properties.

7. Coming to the first property at London i.e., Apartment No.8 in Hepworth Court 30 at Gatlif Road, London, the PCIT notes in his order that this property was not shown in the 'AL Schedule' and also no ALV (Annual Letting Value) from this property was disclosed by the assessee. According to PCIT, even the assessee has not mentioned that the assessee has sold the property in the relevant assessment year 2020-21. According to him, the Assessing Officer has not conducted any enquiry and hence, it attracts Explanation 2(1) to Section 263 of the Act which deems the assessment order erroneous insofar as is prejudicial to the interest of the Revenue due to lack of such enquiry/verification.

8. At the time of hearing now before us, the learned Counsel for the assessee stated that this property was sold on 25th March, 2019 and capital gain was offered to tax in assessment year 2019-20. He filed copy of computation of income for assessment year 2019-20, wherein this property was declared as sold and capital gain was offered to tax. The relevant details are enclosed at page 115, wherein long term capital gain is calculated at ₹27,21,092/-. When this fact was confronted to the learned CIT-DR, he could not controvert the same but, he made only one submission that this can be verified by the Assessing Officer.

9. After hearing rival contentions and going through the facts of the case, we noted that property at Apartment No.8 in Hepworth Court 30

at Gatlif Road, London was sold by the assessee on 25th March, 2019 and the capital gain was offered to tax in assessment year 2019-20, which is verified from the computation of income filed along with return of income for the assessment year 2019-20. Hence, there is no question of declaration of ALV in the relevant assessment year.

10. Coming to the next Apartment No.20, Hirst Court, London, the ALV of the same is to be computed. The PCIT on perusal of the schedule for ALV for assessment year 2020-21 noted that another property located in London as Apartment No.20, Hirst Court, Grosvenor Duck, 20 Gattiff Road, valued at ₹21,34,80,319/- but no ALV is disclosed for this property. According to the PCIT, the Assessing Officer has not made any enquiry on this issue and hence, in terms of Explanation 2(a) to Section 263 of the Act, the assessment order deems to be erroneous insofar as it is prejudicial to the interest of the Revenue due to lack of such enquiry/verification.

11. At the time of hearing, learned Counsel for the assessee pointed out that this property is exclusively used for office purposes for the assessee as he visits London frequently for various conferences and income from London office has also been received and declared as professional fee. Learned Counsel for the assessee stated that once this property is used for office premises, no ALV is required to be assessed. He stated that the property used for office premises does not fall under the vacant property or residential property but, it is used for commercial purposes i.e., assessee's profession of law. Hence, no ALV can be estimated. This fact was brought to the notice of the Assessing Officer and, that is why, the Assessing Officer has not added any ALV of this property.

12. Learned CIT-DR could not contradict the fact statement given by the assessee's Counsel as well as the details filed by the assessee during the course of original assessment proceedings that this property is used by the assessee for his profession as office of the assessee for conducting various conferences with his clients and income from London office has been received by the assessee.

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.

14. Coming to the next property as Apartment No.19, Hirst Court at Gatlif Road, London, the learned PCIT noted that this property was value at ₹6,34,17,575/- but, the assessee has disclosed ALV at an incredibly low value of ₹3.50 lakhs for the year under consideration. According to him, this value is very low as compared to the market rate, an indication of which can be had from an AI overview as per law, in the relevant time period in London, which yielded rental income ranging from 4 to 6%. The PCIT has taken the AI overview and the same is reproduced now from the order of learned PCIT:-

"AI Overview

In 2020, the average rental yield for properties in London was around 4-6%. Rental yield is the annual rental income of a property expressed as a percentage of its value. It's a measure of how profitable a property is."

15. The PCIT estimated the rental income at 5% and accordingly, estimated the ALV at ₹32 lakhs and directed the Assessing Officer that the ALV of this property was required to be assessed as per prevailing market rates, which the Assessing Officer failed to do so. According to the PCIT, no enquiry was made by the Assessing Officer and, therefore, as per Explanation 2(a) to Section 263 of the Act, the assessment order deems to be erroneous insofar as is prejudicial to the interest of the Revenue due to lack of such enquiry/verification.

16. Learned Counsel for the assessee stated that this property was purchased by the assessee on 16th August, 2019 and therefore, the ALV of the property for seven months has been disclosed at ₹3.50 lakhs. He stated that this property is being used by the assessee whenever he visits London for official purposes or for holding various conferences with clients as a residential unit. Further, learned Counsel for the assessee stated that according to the assessee, this is the ALV of the property and there is no basis given by the learned PCIT and he has simply took an AI overview and what is the basis of that, nobody knows. Learned Counsel for the assessee argued that some website or some AI overview cannot be the basis for making estimate of ALV. According to him, the ALV is defined in Section 23(1) of the Act and accordingly, it has to be determined. He stated that the assessee has disclosed the ALV of ₹3.50 lakhs for seven months and the Assessing Officer, after noticing from the records, raised no query and it is

presumed that the Assessing Officer has gone into the details and after that framed assessment. The Assessing Officer has formed an opinion and no question regarding ALV was raised because he was convinced that he has disclosed ALV of ₹3.50 lakhs for this property for seven months.

17. On the other hand, learned CIT-DR supported the revision order and argued that PCIT has rightly estimated the rent yield at the rate of 5% and estimated the ALV of ₹32 lakhs on the basis of an AI overview.

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 16th 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.

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 ₹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 ₹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.

22. Coming to the next property located at 205, Jor Bagh, New Delhi. The property was acquired at a cost of ₹5,51,26,100/- and the assessee has shown ALV at a sum of ₹1,75,300/- per annum. The PCIT noted that the said property is not included in the business asset as is seen from the depreciation chart and Assessing Officer has accepted the ALV without verification which results in the assessment being erroneous insofar as is prejudicial to the interest of the Revenue within the meaning of Explanation 2(a) to Section 263 of the Act. Learned Counsel for the assessee stated that the Assessing Officer has specifically raised a query in regard to this property and PCIT has specifically noted this fact in his revision order Paragraph 6.5 that notice under Section 142(1) dated 5th September, 2022 was issued asking query about property at 205, Jor Bagh, New Delhi (wrongly mentioned as Noida). Learned Counsel for the assessee stated that specific reply was tendered by the assessee vide letter dated 22nd September, 2022 stating that ALV of this property has been offered by the assessee as no income from house property has accrued to the assessee as this property has been occupied by the assessee for professional purposes and has never been let out on lease. Learned Counsel explained that assessee being a Senior Advocate of the Supreme Court of India and had been the Attorney General for India and consequently, assessee has its work pan India and because of the nature of profession, the above said property was used and utilized for

professional purposes and accordingly, ALV of that property was declared. He stated that once the Assessing Officer was satisfied and accepted the ALV declared by the assessee, the PCIT should have given a finding how that is wrong or not correct. Learned Counsel stated that PCIT has not given any basis for recomputing the ALV of this property. Hence, the PCIT cannot hold the assessment order as erroneous or prejudicial to the interest of the Revenue in terms of Section 263 of the Act.

23. 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.

24. 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 Jor Bagh property 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.

25. The next property is a farm house located at Green Meadow Sahoopur, Delhi, for which the assessee has declared ALV of ₹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 ₹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 ₹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 ₹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 Sahooper, 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.

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 ₹1,93,26,447/- and assessee has declared ALV at ₹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 ₹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.

33. The next property is the Golf Links property located at 139, Golf Links, New Delhi. The PCIT noted from Schedule AL for assessment

year 2020-21 that this property is acquired at a cost of ₹63,41,35,318/- and assessee is declared extremely low ALV on deemed let out basis at ₹3,01,200/- per annum. It was noted by the PCIT that this property has two floors and, in earlier years also, the ALV declared is the same. The PCIT further observed that the assessee has claimed Nil ALV in terms of Section 23(2)(a) read with Section 23(4)(a) of the Act but, for the purpose of Section 23(2)(a) of the Act, the actual occupation of the property for self-residence was required to be examined as assessee has already declared and claimed self-occupation of another property at No.2, Golf Links, New Delhi as per assessee's submissions. Learned Counsel stated that this condition as mentioned in Sub-section 23(2) has been amended only in the Finance Act, 2025 with effect from 01.04.2025 and applicable for assessment year 2026-27. According to the PCIT, the Assessing Officer failed to verify the claim of the assessee and hence, assessment order 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. Learned Counsel for the assessee before us stated that admittedly, this plot was purchased on 24th May, 2011 and declared ALV from assessment year 2012-13 and in assessment year 2013-14, the New Delhi Municipal Council assessed the ALV i.e., the fair market rent at ₹3,01,200/- per month and, on that basis, the ALV was declared by the assessee although the property is occupied by the assessee for his residential-cum-professional purposes. Learned Counsel stated that once the property has been assessed by NDMC, the assessee is declaring the same. Even now, the PCIT has not given any basis 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.

34. 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.

35. 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 139, Golf Links, New Delhi at ₹3,01,200/-, 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.

36. Coming to property No.2, Golf Links, New Delhi, the learned PCIT noted from Schedule 'AL' for assessment year 2020-21 that this property was acquired for a total cost of ₹140,80,00,450/-. For this property, no ALV has been disclosed by the assessee and the same is shown as self-occupied property. However, he records that nowhere this property has been shown as assessee's residence and there is no evidence that property No.2, Golf Links, New Delhi has been actually occupied by the assessee. The PCIT further notes that the assessee has shown property located at 59, Sunder Nagar as his residence in the income tax return filed for assessment year 2020-21 and in the tax audit report also but, there is no evidence on record which proves that the property at 2, Golf Links, New Delhi has actually been occupied by

the assessee and used as self-occupied one. Therefore, the PCIT noted that the assessment order is erroneous insofar as is prejudicial to the interest of the Revenue in terms of Explanation 2(1) to Section 263 of the Act.

37. Before us, learned Counsel for the assessee argued that this property was purchased in three tranches and then demolished and reconstruction was completed in March, 2024. Learned Counsel filed the documents in his paper book. Hence, he argued that once the property has been completed in March, 2024, there is no question of any ALV in the relevant assessment year 2020-21. When these facts were confronted to the learned CIT-DR, he could not controvert the above fact situation.

38. We have heard the rival contentions and perused the material placed before us. We noted that the evidence shows that this property was demolished and was under construction during the relevant assessment year and reconstruction was finally completed in March, 2024. Hence, in the relevant assessment year, there is no question of any ALV.

3rd Issue – Initiation of penalty proceedings.

39. The next point is regarding initiation of penalty proceedings under Section 271C for non-deduction of TDS under Section 194C of the Act on payments aggregating to ₹9,20,765/-. According to the PCIT, the assessee, during the course of assessment proceedings, admitted that it had failed to deduct tax at source under Section 194C on payments aggregating to ₹9,20,765/-, but has not initiated penalty proceedings under Section 271C of the Act in the assessment order. Accordingly, the PCIT directed that the penalty under Section 271C of

the Act has to be initiated which resulted in loss of revenue of ₹18,415/- rendering the assessment order erroneous insofar as is prejudicial to the interest of the Revenue in terms of Section 263 of the Act.

40. We have heard the rival contentions on this issue and find from the argument of the learned Counsel that the PCIT cannot take recourse under Section 263 of the Act revising the assessment for non-initiation of penalty under Section 271C of the Act. He argued that initiation of penalty is the satisfaction of the Assessing Officer and not that of the PCIT in revision proceedings. He stated that the Assessing Officer has accepted the plea of the assessee but, there may be chances that to whom the other parties to whom payments have been made have already paid taxes on that amount and there cannot be any default on the part of the assessee for the same. Hence, learned Counsel argued that the revision order passed by the PCIT for initiating penalty proceedings directing the Assessing Officer is bad in law.

41. Learned CIT-DR relied on the revision order passed by the PCIT under Section 263 of the Act.

42. We noted that as regards the non-initiation of penalty proceedings and whether the assessment can be revised under Section 263(1) of the Act, the Hon'ble Delhi High Court in the case of CIT Vs. Nihal Chand Rekyan – [2000] 242 ITR 45 (Del) has held that where penalty proceedings were not initiated before or at the time of making the assessment, the Commissioner cannot invoke power under Section 263(1) of the Act so as to set aside the assessment order and direct the initiation of penalty proceedings.

43. On each of the issues discussed above i.e., investment made by the assessee in various funds whether these are equity-oriented funds or not and liable to capital gain tax under the head 'long term capital gain' to be taxed under Section 112A of the Act or normal provisions under the head 'short term capital gain', secondly, the nil ALV or lower ALV as discussed in regard to above stated properties, in the above part of this order vide Paragraph No. 07 to 40, and non-initiation of penalty proceedings under Section 271C of the Act, whether these attract the revision provisions under Section 263 of the Act or not. We note that the learned PCIT was of the view that the investment made by the assessee in funds was not equity-oriented funds and once these are not equity-oriented funds, these are not to be taxed under the special rate of taxation under Section 112A of the Act. We note that the assessee could explain before us that the funds are equity-oriented funds and we have given a clear finding in paragraph 6 of this order. We also find that the PCIT has not given a finding or has not observed that how these funds are not equity-oriented funds and without that, the PCIT cannot invoke the revisionary power. We are of the view that consideration of the PCIT as to whether an order is erroneous insofar as it is prejudicial to the interest of the Revenue must be based on materials on record of the proceedings called for by him. If there is no such material on record on the basis of which it can be said that the PCIT acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without justification. In similar circumstances, Hon'ble Bombay High Court in the case of CIT Vs. Gabriel India Ltd. (199) 203 ITR 108 (Bom) held the similar views. We are of the view, though, it is not expected of the PCIT to record his final conclusion in the order passed in revision proceedings under Section 263 of the Act, but, he must, at least indicate in his order how the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. The revisional power

under Section 263 of the Act is not meant to be exercised to correct every error of fact, but the error must be of such a nature that it is erroneous and prejudicial to the interest of the Revenue. The PCIT, in revisional proceedings under Section 263 of the Act, has no jurisdiction to set aside the order of assessment merely to conduct another investigation without finding the basis or without any material that the order is erroneous one and also prejudicial to the interest of the Revenue. We noted from the findings of the PCIT, in the present case before us, on various issues that the PCIT has not recorded reason for his conclusion, which is necessary for any quasi-judicial order required to be made by a quasi-judicial authority. The necessary consequence of revision order is that while passing the order revising an order passed by a subordinate authority, the PCIT must record reasons in support of his conclusion that the order is revised being erroneous and that it would be prejudicial to the interest of the Revenue due to such errors. In case the PCIT does not indicate the reasons for invoking the provisions of Section 263, his order cannot be held to be valid. In the present case, the entire material in regard to all the funds and the properties where ALV was questioned by the PCIT, the assessee has produced relevant material and offered explanations in pursuance to the notices issued under Section 142(1) and 143(2) of the Act and, after considering the materials and explanations, the Assessing Officer passed the assessment order and came to a conclusion and accepted the explanation. The mere fact that a different view can be taken, should not be the basis for an action or invocation of Section 263 of the Act. Such action, if taken, cannot be held to be justified because the material was there in the assessment record and the said material was considered by the Assessing Officer and a particular view was taken. This view of ours is supported by the decision of Hon'ble Supreme Court in the case of The Malabar Industrial Co.Ltd. Vs. CIT (2000) 243 ITR 83 (Supreme Court).

44. 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 all these three issues, i.e., the assessment of various funds, whether long term or short term, the issue of ALV of various properties and initiation of penalty proceedings under Section 271C of the Act, 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, subject to the condition that the Assessing Officer will verify the purchase/cost of acquisition of SBI Gold Fund on the date of purchase i.e., 10th August, 2018. In terms of the above, the appeal of the assessee is allowed.

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

Decision pronounced in the open Court on 16th February, 2026.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

VK.

Sd/-

(MAHAVIR SINGH)
VICE PRESIDENT

Copy forwarded to: -

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

Assistant Registrar