IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"B" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA.Nos.278& 281/MUM/2021
(A.Ys: 2010-11& 2011-12)

Shri Nitin Kumar Didwania 172, 7th Floor, Khistij Apartment 47 Napean Sea Road Mumbai – 400 036 **PAN No: AACPD7055J**	*v.*	Pr.CIT-(central)-3 Room No. 1901, 19th Floor Air India Building Nariman Point Mumbai – 400 021
(Appellant)		**(Respondent)**

ITA.Nos. 279, 280, 282, 283 & 284/MUM/2021
(A.Ys: 2010-11, 2011-12, 2012-13, 2014-15 & 2015-16)

Smt. Niti Nitin Kumar Didwania 172, 7th Floor, Khistij Apartment 47 Napean Sea Road Mumbai – 400 036 **PAN No: AAAPA8012E**	*v.*	Pr.CIT-(Central)-3 Room No. 1901, 19th Floor Air India Building Nariman Point Mumbai – 400 021
(Appellant)		**(Respondent)**

Assessee by	**:**	**Shri Rakesh F. Joshi**
Revenue by	**:**	**Shri Rahul Raman**
Date of Hearing	**:**	**06.10.2021**
Date of Pronouncement	**:**	**02.11.2021**

O R D E R

PER RAVISH SOOD, J.M

The present appeals filed by the captioned assessee's are directed against the respective orders passed by the Principal Commissioner of Income Tax (Central)-3, Mumbai (for short 'Pr.CIT') u/s. 263 of the Income-Tax Act, 1961 (for short 'Act'). As common issues are involved in the aforesaid appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first take up the appeal of the assessee, viz. Shri. Nitin Kumar Didwania for A.Y.2010-11 in ITA.No.278/Mum/2021. The assessee has assailed the impugned order on the following grounds before us:

"1. On the fact and circumstances of the case as well as in Law, the Learned Principal Commissioner of Income Tax (PCIT) has erred in passing ex-parte order U/s 263 of the Income Tax Act, 1961 without providing sufficient opportunity of being heard to the appellant.

2. On the fact and circumstances of the case as well as in Law, the Learned Principal Commissioner of IncomeTax(PCIT)haserredininitiating proceedings U/s 263 of the Income Tax Act, 1961 (the Act) vide show-cause notice dated 22.01.2021 and passing an order U/s 263 of the Act without considering facts fit Circumstances of the case.

3. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in passing Revision Order u/s.263 of the Income Tax Act, 1961 for the assessment order u/s. 143(3) r.w.s 153A of the Act passed by the Learned Assessing Officer after making adequate enquiries and application of mind, without considering the facts and circumstances of the case.

4. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in considering the order passed u/s. 143(3) r.w.s 153A of the Income Tax Act, 1961 by the Learned Assessing officer is erroneous and prejudicial to the interest of the revenue, without appreciating the facts and circumstances of the case.

5. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in passing the order u/s.263 against the assessment order which was already merged with Learned CIT(A) order, hence order passed u/s.263 is invalid and bad in law.

6. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in directing the Learned Assessing Officer to make further addition of Rs.30,34,332/- on the issue which was already considered by the Learned Assessing officer, while passing theAssessment Order u/s. 143(3) r.w.s 153A of the Act, without appreciating the facts and circumstances of the case."

2. Issue involved in the present appeal lies in a narrow compass i.e what is the scope of jurisdiction of a revisional authority u/s 263 of the Act, after the order passed by the assessing officer had been considered and decided by an appellate authority.

3. Shorn of unnecessary facts, the assessee had in his return of income filed in response to notice issued u/s 153A of the Act had claimed exemption u/s 10(38) of Long Term Capital Gain on sale of shares. However, the A.O while framing the assessment declined the assessee's claim for exemption and assessed the amount of capital gain as an unexplained credit u/s 68 of the Act. Also, an addition @ 5% of the amount of the capital gain was added, on the ground, that the same would have been incurred by the assessee for availing the services of an accommodation entry provider.

4. On appeal, the CIT(A) deleted the aforesaid addition by granting telescoping benefit of unrecorded sales of the group company.

5. Thereafter, the Pr.CIT being of the view that the order passed by the A.O u/s 143(3) r.w.s 154A, dated 29.12.2017 was erroneous insofar it was prejudicial to the interest of the revenue u/s 263 of the Act, for two fold reasons, viz. (i) that the A.O had erred in not making the addition u/s 68 of the entire sale consideration of the shares and had wrongly restricted the same to the extent of capital gain therein involved; and (ii) that the quantification of the commission paid by the assessee for availing the services of the accommodation entry provider was wrongly carried out by the A.O w.r.t the amount of capital gain instead of the amount of the sale consideration of shares. Accordingly, the Pr.CIT vide his order passed u/s 263, dated 05.02.2021 directed the A.O to modify the order passed by him u/s 143(3) r.w.s 153A, dated 29.12.2017 and make the additions as per his observations recorded in the order of revision.

6. The assessee being aggrieved with the order passed by the Pr.CIT u/s. 263 of the Act has carried the matter in appeal before us. At the very outset, it was submitted by Shri Rakesh F. Joshi, Ld. Authorized Representative (for

short "A.R") for the assessee that the short issue involved in the present appeal was the validity of the jurisdiction that was assumed by the Pr. CIT for passing the order u/s. 263 of the Act. Elaborating on his aforesaid contention, it was submitted by the Ld. A.R that the assessment framed by the A.O vide his order passed u/s. 143(3) r.w.s. 153A, dated 29.12.2017 was thereafter assailed before the Commissioner of Income Tax (Appeals)-53, Mumbai [for short "CIT(A)"]. It was submitted by the ld. A.R that the CIT(A) vide his consolidated order dated 25.01.2019 had after exhaustive deliberations deleted the said respective additions by granting telescoping benefit of unrecorded sales of the group company. Backed by the aforesaid facts, it was submitted by the ld. A.R that now when the assessment order in question had been the subject matter of appeal before the CIT(A) and both the aforesaid additions made by the A.O had been considered and decided in appeal by the CIT(A), vide his order dated 25.01.2019, therefore, as per the "Explanation 1(c)" to sub-section (1) of Sec. 263 of the Act the Pr.CIT was thereafter precluded from extending his revisional jurisdiction as regards both of the aforesaid matters. In order to buttress his aforesaid claim the Ld. A.R took us through "Explanation 1(c)" to sub-section (1) of Sec. 263 of the Act. In support of his aforesaid contention the Ld. A.R had relied on the judgment of the Hon'ble High Court of Bombay in the case of M/s. Ranka Jewellers *v.* Addl. CIT & Anr. [(2010) 328 ITR 148 (Bom)]. It was submitted by the Ld. A.R, that as held by the Hon'ble High Court, as per "Explanation 1(c)" to sub-section (1) of section 263, where any order passed by the A.O had been made a subject matter of any appeal, then, the revisional jurisdiction of the CIT shall thereafter extend only to such matters as had not been considered and decided in such appeal. It was submitted by the Ld. A.R that as per the aforesaid settled position of law the Pr.CIT in the present case had clearly exceeded his jurisdiction by extending his revisional jurisdiction to such matters that had been considered and decided in appeal by the CIT(A). It was stated by the Ld. A.R that his contentions were confined to the aforesaid solitary issue involved in the present appeal, which glaringly revealed that the Pr.CIT had traversed beyond the scope of his revisional jurisdiction and passed

the order u/s. 263 of the Act. However, on a specific query by the Bench that unlike as in the case of M/s. Ranka Jewellers (supra), as the issues involved in the present appeal i.e. whether the addition u/s 68 of the Act was to be made in respect of the entire sale proceeds of shares or was to be confined to the extent of the amount of capital gain had not been decided by the CIT(A), therefore, how the said judicial pronouncement would assist its case, the Ld. A.R failed to come forth with any plausible explanation. It was stated by the Ld. A.R that he be allowed liberty to furnish a short note in order to buttress his aforesaid contention a/w supporting judicial pronouncements. Thereafter, the ld. A.R with the permission of the bench had placed on record written submissions in support of his aforesaid contentions.

7. Per contra, the ld. Departmental Representative (for short "D.R") relied on the order passed by the Pr.CIT u/s 263 of the Act. It was submitted by the Ld. D.R that the Pr.CIT had rightly assumed jurisdiction and revised the order u/s. 263 of the Act. It was submitted by the Ld. D.R that as the appeal filed by the assessee was devoid and bereft of any merit, therefore, the same did not merit acceptance and was liable to be dismissed.

8. We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. A.R in order to drive home his aforesaid contentions. As is discernible from the order passed by the Pr.CIT u/s. 263 of the Act, dated 05.02.2021, the assessment order passed by the A.O u/s. 143(3) r.w.s 153A of the Act, dated 29.12.2017 was held by him to be erroneous in so far it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act, for two fold reasons, viz. (i) that the A.O had short assessed the assessee's income by restricting the addition u/s 68 as regards the bogus transactions of sale of shares only to the extent of the capital gain instead of the alleged sale proceeds credited in his bank account; and (ii) that the A.O had

short assessed the addition u/s 69C as regards the commission alleged to have been paid by the assessee to accommodation entry providers to facilitate the bogus sale transactions by quantifying the same on the basis of the capital gain and not the amount of sale consideration.

9. Before us, the solitary contention of the Ld. A.R is that as both the aforesaid issues in question, had been considered and decided by the CIT(A) vide his order dated 25.01.2019, therefore, the Pr.CIT was divested of his jurisdiction to revise the order passed by the A.O u/s 143(3) r.w.s 153A, dated 29.12.2017 with respect to the said matters. We have given a thoughtful consideration to the aforesaid claim of the Ld. A.R and before adverting any further deem it fit to cull out Sec. 263 of the Act, which reads as under :

"Revision of orders prejudicial to revenue.

(1) The [Principal Commissioner or Commissioner] may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing Officer] is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

[*Explanation 1].*—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed [on or before or after the 1st day of June, 1988,] by the Assessing Officer shall include—

(i) an order of assessment made by the [Assistant Commissioner or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the [Joint Commissioner] under section 144A;

(ii) an order made by the [Joint Commissioner] in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the [Principal Chief Commissioner or Chief Commissioner] or [Principal Director General or Director General] or [Principal Commissioner or Commissioner] authorised by the Board in this behalf under section 120;

(b) "record" [shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the [Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner];

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal [filed on or

before or after the 1st day of June, 1988], the powers of the [Principal Commissioner or Commissioner] under this sub-section shall extend [and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal].

[Explanation 2.— For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made 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.]

[(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso of section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."

(emphasis supplied by us)

10. Admittedly, as per "Explanation 1(c)" to sub-section (1) of Sec. 263 of the Act, where any order passed by the A.O had been the subject matter of any appeal, then, **the powers of the revisional authority shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal**. Notably, our indulgence in the present appeal is limited to adjudication of the aspect as to what is the scope of the jurisdiction of a revisional authority under Sec. 263 of the Act after the order of assessment had been a subject matter of any appeal. As per "Explanation 1(c)" to sub-section (1) of Sec. 263 of the Act, once an order passed by the A.O had been the subject matter of any appeal, the powers of the revisional

authority qua such order are narrowed down and thereafter shall extend only to such matters as had not been considered and decided in such appeal. Basically the controversy in the case before us hinges around the aspect as to how the term *"…such matters as had not been considered and decided in such appeal"* as contemplated in "Explanation 1(c)" to sub-section (1) of Sec. 263 is to be construed. In our considered view, once an order passed by the assessing officer had been subjected to an appeal, then, as per "Explanation 1(c)" to sub-section (1) of Section 263 of the Act, any such matter that had been considered and decided in such appeal would fall beyond the scope and realm of the jurisdiction vested with the revisional authority u/s 263 of the Act. In other words, once a matter i.e an addition, disallowance or any other issue emanating from the assessment order have been considered and decided in an appeal, then, it would thereafter not be open for the CIT/Pr.CIT to extend his revisional jurisdiction as regards such matters. Although, the "Explanation 1(c)" to sub-section (1) of Sec. 263 of the Act circumscribes the powers vested with a revisional authority as regards an order passed by the A.O which had been the subject matter of any appeal, however, the jurisdiction to revise such matters as had not been considered and decided in such appeal continues to remain with the revisional authority. On the basis of our aforesaid observations, we hold a strong conviction that where an addition, disallowance or any other matter emanating from an order passed by the assessing officer had been considered and decided in an appeal, then, as per the doctrine of merger the revisional authority would thereafter stand divested of his jurisdiction to exercise his revisional jurisdiction as regards such matters that have been so considered and decided by the appellate authority. Our aforesaid view is as per the mandate of the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Shri Arbuda Mills Ltd. (1998) 231 ITR 50 (SC)**. Considering the scope and gamut of the jurisdiction of a revisional authority in the backdrop of clause (c) to 'Explanation 1' of sub-section (1) of Sec. 263 of the Act that was made available on the statute vide the Finance Act, 1989 w.r.e.f 01.06.1988, it was observed by the Hon'ble Apex Court that the consequence of the said

amendment made with a retrospective effect was that the powers under Sec. 263 of the CIT shall extend, and shall deemed always to have extended, to such matters as had not been considered and decided in an appeal. In the case before the Hon'ble Apex Court the ITO had after, inter alia, making certain additions and disallowances framed the assessment vide his order passed under Sec. 143(3) r/w s. 144B on 31.07.1978. The ITO while framing the assessment had accepted three claims of deduction/loss of the assessee company. In the appeals filed by the assessee, the aforesaid three claims of deduction/loss of the assessee company which were accepted by the ITO were not the subject matter of the appeals. Issue before the Hon'ble Apex Court was as to whether or not the order of the ITO regarding the aforesaid three claims of deduction/loss in respect of which the assessee had no occasion to prefer an appeal had merged in that of the CIT(A) so as to exclude the jurisdiction of the CIT under Sec. 263 of the Act, to which the Hon'ble Apex Court answered in the negative, observing as under :

> "7. The consequence of the said amendment made with retrospective effect is that the powers under s. 263 of the CIT shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the CIT under s. 263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. This is sufficient to answer the question which has been referred."

Accordingly, on the basis of the aforesaid settled position of law, we may herein observe, that the jurisdiction of a revisional authority as per the "Explanation 1(c)" to sub-section (1) of Sec. 263 would be circumscribed only as regards such matters that had been considered and decided in appeal, and not otherwise. Also, support is drawn from the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT (Exemption) Vs. Slum Rehabilitation Authority (2019) 412 ITR 521 (Bom)**. In the said case the assessee had in its return of income claimed exemption u/s 11 of the Act. However, the A.O vide his order u/s 143(3), dated 22.12.2011 after considering the activities carried out by the assessee and its legal status declined its claim for exemption u/s 11 of the Act. On appeal, the CIT(A) granted the benefit of exemption u/s 11 to the

assessee and allowed its appeal. Thereafter, the CIT invoked his revisional jurisdiction u/s 263 of the Act, on the ground, that by virtue of Sec. 2(15) of the Act, which defines the term "charitable purpose", the activities of the assessee could not be considered as charitable in nature. Accordingly, the CIT vide his order passed u/s 263 of the Act, dated 28.03.2014 held the order of assessment passed by the A.O as erroneous and prejudicial to the interest of the revenue and set-aside the same with a direction to him to pass a de-novo assessment order after considering the 'proviso' to Sec. 2(15) of the Act. On appeal by the assessee the Tribunal set-aside the order passed by the CIT u/s 263 of the Act, inter alia, on the ground, that as the assessment order had merged with the order passed by the CIT(A), therefore, the CIT had wrongly assumed jurisdiction and revised the order u/s 263 of the Act. On further appeal, it was the claim of the revenue before the Hon'ble High Court that as the A.O had in the assessment order not declined the assessee's claim for exemption u/s 11 of the Act on the ground that it was hit by the 'proviso' to Sec. 2(15) of the Act, therefore, the said aspect was never the subject matter of appeal before the CIT(A), and thus, the doctrine of merger would not be applicable. However, the Hon'ble High Court did not find favor with the aforesaid claim of the revenue. It was observed by the Hon'ble High Court that once the entire claim of the assessee for exemption u/s 11 of the Act was at large before the CIT(A), then, the latter was vested with wide powers and jurisdiction to examine all aspects of such claim, including the power of enhancing the assessment. Backed by its aforesaid observation, the Hon'ble High Court was of the view that if the revenue was of the opinion that the order passed by the A.O declining the assessee's claim for exemption u/s 11 could be sustained not on the ground on which the same was rejected by him, but on some other legal ground, then, it was open for the revenue to argue the same before the CIT(A). It was further observed by the Hon'ble High Court that nothing prevented the revenue from persuading the CIT(A) to reject the claim of the assessee for exemption u/s 11 of the Act on such other legal ground. It was observed by the Hon'ble High Court that by no means the CIT in exercise of his

revisional powers could have initiated fresh inquiries about the same claim on the ground that one of the aspects of such a claim was not considered by the A.O. For the sake of clarity the observations of the Hon'ble High Court are culled out as under:

> "8. According to the Revenue, since the receipts of the assessee from the activities referred to in the first proviso far exceeds 25 lakh Rupees in the previous year, by virtue of first proviso, the activities of the assessee would be excluded from the expression "charitable purpose". In the present appeal, we are not required to examine the correctness of this contention. We have referred to this proviso only in order to get better clarity on the issue at hand. The question to be decided by us is whether the Tribunal was correct in holding that the Commissioner committed an error in exercising his revisional powers. In this context, we may recall, the Assessing Officer had rejected the assessee's entire claim of exemption under Section 11 of the Act, not with the aid of the proviso to Section 2(15) of the Act but on entirely different ground. Be that as it may, the assessee's claim stood rejected upon which the assessee had filed appeal before the Appellate Commissioner and the Appellate Commissioner allowed the appeal which was also confirmed by the Tribunal. Under these circumstances, in our opinion, the Tribunal was correct in drawing a conclusion that on the principle of merger, it was not open for the Commissioner to take the order of assessment in revision. Once the entire claim of the assessee for exemption under Section 11 of the Act was at large before the Appellate Commissioner, the Commissioner (Appeals) had wide powers and jurisdiction to examine all aspects of the such a claim. It is well settled that the Commissioner (Appeals) has even the power of enhancement of assessment once an appeal is filed by the assessee. The present case was not even one of the enhancement of assessment, it was a case where the claim of the assessee was rejected by the Assessing Officer on one ground. If the Revenue was of the opinion that such order could have been sustained not on the ground on which the Assessing Officer had rejected it, but on some other legal ground, it was open for the Revenue to argue the same before the Appellate Commissioner. Nothing prevented the Revenue from persuading the Appellate Commissioner to reject the claim of the assessee on such legal ground. At any rate, the Commissioner in exercise of the revisional powers cannot initiate fresh inquiry about the same claim on the ground that one of the aspects of such a claim was not considered by the Assessing Officer."

Also, we find that a similar view had been taken by the **Hon'ble High Court of Gujarat** in the case of **CIT Vs. Nirma Chemical Works Pvt. Ltd. (2009) 309 ITR 67 (Guj)**. In the case before the Hon'ble High Court the assessee had claimed deduction u/s 80-I of the Act, which was partially allowed by the A.O. On appeal, the CIT(A) found favor with the assessee's claim and allowed the appeal. Subsequently, the CIT in exercise of powers u/s 263 of the Act disallowed the assessee's claim for deduction u/s 80-I of the Act, on the ground, that the assets used by the assessee in the new industrial undertaking

had formed part of old plant and machinery and the new industrial undertaking was formed by reconstruction or restructuring or splitting up of the old business. In the backdrop of the aforesaid facts, the Hon'ble High Court held that as the requirement of fulfillment of the conditions stipulated under sub-section (2) of Sec. 80-I of the Act were very much the subject matter of the appeal in relation to the income which was disallowed by the A.O, therefore, on the ground of merger the CIT could not have exercised his revisional powers. Further, we find that a similar issue had came up before the **Hon'ble High court of Gujarat** in the case of **Haryana Paper Distributors Pvt. Ltd. Vs. PCIT (2009) 412 ITR 515 (Guj)**. In the case before the Hon'ble High Court the A.O had doubted the genuineness of the purchases that were claimed to have been made by the assessee. It was submitted by the assessee before the A.O that the purchases, however, in any case if the same were not to be believed as genuine, then, profit from such dealing be calculated @ 4% of the turnover. The A.O accepted the assessee's latter contention and made G.P addition @ 4% of the impugned purchases and after granting adjustment of the already offered G.P of 1.79% made an addition of the balance amount. On appeal, the assessee sought deletion of the entire addition made by the A.O. During the pendency of the appeal the CIT issued a notice u/s 263 for revision of the order of assessment, on the ground, that now when the A.O had held that the entire purchases were bogus, then, he was in error in limiting the addition only to a small portion of the same i.e by applying the gross profit rate. During the pendency of the 'show cause' notice the CIT(A) decided the assessee's appeal, and held, that the A.O could not have made the addition of Rs. 9.57 lac by applying the gross profit rate. On a writ petition filed by the assessee, it was observed by the Hon'ble High Court that the CIT(A) while hearing the assessee's appeal had powers to even enhance the assessment, and thus, if he was of opinion that not only limited additions made by A.O but much larger additions were justified, then, he could have certainly exercised such powers after putting the assessee to notice. Observing, that Clause (c) of 'Explanation 1' to Sec. 263(1) of the Act might be worded in a manner as suggesting extent of powers of CIT for taking

an order in revision, the Hon'ble High Court was of the view that its effect was to circumscribe such powers in cases where order passed by the A.O was subject matter of any appeal, and such subject matter was considered and decided in such appeal. Backed by its aforesaid observations, the Hon'ble High Court concluded that "Explanation 1(c)" to sub-section (1) of Sec. 263 statutorily recognized the principle of merger in order to avoid any conflict of opinion between two quasi-judicial authorities of the same rank. It was, thus, observed by the Hon'ble High Court that CIT had no jurisdiction to exercise his revisional powers qua any such matter that had been considered and decided in appeal. Also, a similar view can be traced in the order of the **Hon'ble High Court of Karnataka** in the case of **PCIT & Anr. Vs. H. Nagraja (2018) 406 ITR 242 (Kar)**. In its said order, it was observed by the Hon'ble High Court, that the CIT in exercise of his revisional jurisdiction u/s 263 cannot once again examine the very same issue so as to disallow certain expenses that had been considered by the CIT(A), as the order of assessment made by the A.O got merged with the order of the appellate commissioner. It was observed by the Hon'ble High Court that in case the revenue was aggrieved with the order of the appellate commissioner, then, the remedy available with it was to either file an appeal to the Tribunal or to re-open the assessment. Insofar the judgment of the Hon'ble High Court of Bombay in the case of Ranka Jewellers (supra) is concerned, the same is found to be distinguishable on facts. In the aforesaid case as both the issues in question were evidently considered and decided by the CIT(A), therefore, it was held by the Hon'ble High Court that the Commissioner of Income Tax could not have exercised his revisional jurisdiction u/s 263 of the Act.

11. Backed by the aforesaid settled position of law, we are of the considered view that as both the issues in question on the basis of which the Pr.CIT had assumed jurisdiction u/s 263 of the Act had been considered and decided in appeal by the CIT(A), therefore, the Pr.CIT was clearly divested of his jurisdiction to have exercised the revisional jurisdiction vested with him u/s 263

of the Act as regards the said issues. We, thus, in terms of our aforesaid observations set-aside the order passed by the Pr.CIT u/s 263 of the Act, dated 05.02.2021 and restore the order passed by the A.O u/s 143(3) r.w.s 153A, dated 29.12.2017.

12. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

ITA No. 281/Mum/2021
A.Y. 2011-12

13. As the facts and the issue involved in the present appeal remains the same as were there before us in the assessee's appeal for the immediately preceding year i.e A.Y. 2010-11 in ITA No. 278/Mum/2021, therefore, our order therein passed shall apply *mutatis mutandis* for the purpose of disposing off the said appeal, viz. ITA No. 281/Mum/2021 for A.Y 2011-12.

14. Accordingly, the order passed by the Pr.CIT u/s 263 of the Act, dated 05.02.2021 for A.Y. 2011-12 is quashed on the same terms.

15. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

ITA Nos. 279,280,282, 283 and 284/Mum/2021
A.Ys. 2010-11 to A.Y. 2012-13 and A.Y. 2014-15 & 2015-16

16. As the facts and the issue involved in the captioned appeals remains the same as were there before us in the case of Shri Nitin Kumar Didwania in ITA No. 278/Mum/2021 for A.Y. 2010-11, therefore, our order therein passed shall apply *mutatis mutandis* for the purpose of disposing off the aforementioned appeals.

17. Accordingly, the respective orders passed by the Pr.CIT u/s 263 of the Act, dated 05.02.2021 for A.Y 2010-11 to A.Y 2012-13, A.Y 2014-15 and A.Y. 2015-16 are quashed on the same terms.

18. The captioned appeals filed by the assessee for A.Y 2010-11 to A.Y 2012-13, A.Y 2014-15 and A.Y. 2015-16 in ITA Nos. 279,280,282, 283 and 284/Mum/2021, respectively, are allowed in terms our aforesaid observations.

19. Resultantly, the appeals in the case of Shri. Nitin Kumar Didwania in ITA No. 278/Mum/2021 for A.Y 2010-11 and ITA No. 281/Mum/2021 for A.Y 2011-12 AND in the case of Smt. Niti Nitin Kumar Didwania in ITA Nos. 279,280,282, 283 and 284/Mum/2021 for A.Y 2010-11 to A.Y 2012-13, A.Y 2014-15 and A.Y. 2015-16 are allowed in terms of our aforesaid observations.

Order pronounced in the open court on 02.11.2021

Sd/-	Sd/-
(PRAMOD KUMAR)	**(RAVISH SOOD)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Mumbai / Dated 02/11/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai.