

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 397/Del/2021
(Assessment Year: 2015-16)**

Sandeep Hooda, C/o. RRA Taxindia, D-28, South Extension, Part-I, New Delhi (Appellant)	Vs. Pr. CIT-7, New Delhi (Respondent)
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PAN: AACPH5453J

Assessee by :	Dr. Rakesh Gupta, Adv Shri Somil Agarwal, Adv Shri Deepesh Garg, Adv
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Revenue by:	Shri H. K. Choudhary, CIT DR
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Date of Hearing:	26/07/2022
Date of pronouncement:	10 th /08/2022

ORDER

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee challenging the order dated 30.03.2021 of Ld Pr. CIT-7, Delhi (hereinafter referred as Ld. Revisional authority) passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') in regard to an assessment order for AY 2015-16, dated 25/12/17 under section 143(3) of the Act passed by the Assessing officer, Id. ACIT, Circle-22(2), Delhi (hereinafter referred as the Ld. AO).

2. Facts in brief are that the case of the assessee was taken up for consideration under the provisions of section 263 of the Income-tax Act, 1961 and the assessee was issued a notice u/s 263 of the I.T. Act dated 23.07.2019 allowing him an opportunity of being heard to show-cause as to why the assessment made in his case should not be enhanced, modified or set aside to be made afresh. This show cause is reproduced as under:

“The assessment in your case for A.Y. 2015-16 was completed u/s 143(3 on 27 / 12/2017 at an income of Rs. 6,91,29,150/-against the returned income of Rs 1,27,54,600/-by the DCIT Circle 22(2), New Delhi.

2. *On perusal of the case records, it is noticed that the assessment order passed by the AO is not only erroneous but also prejudicial to the interest of the revenue for the following reasons:*

3. *It is observed that during the year under consideration, the assessee had sold off property for consideration of Rs. 6,88,00,000/- on which capital gain of Rs. 5,63,74,550/- was earned. Deduction u/s 54 of the Income Tax Act, 1961 to the tune of Rs. 5,63,74,550/- was claimed which was disallowed by the AO. It is noticed that the value/cost of the said property as per circle rate according to the Stamp Duty Act is Rs. 16,63,96,000/- which is evident from the statement of Stamp Duty and details of property under Delhi Stamp Rules, 2007 vide e- Stamp Certificate No.lN-DL02472967801889M dated 08/09/2014 which is part of the sale deed. Paragraph 21 of the said sale deed is reproduced as under-*

"That the consideration amount is fixed between the parties of Rs. 6,88,00,000/- (Rupees Six Crore Eighty Six Crore Eighty Eight Lac Only) as per market value and the Stamp Duty is Paid on Rs. 16.64,00,000/- (Rupees Sixteen Crore Sixty Four Lac Only) with compliance to Section 27 of the Indian Stamp Act, as calculate the Circle Rate Notified in Delhi."

4. *As per Section 50C of the IT Act, 1961, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "Stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessed or assessable shall, for the purposes of section 48, be*

deemed to be the full value of the consideration received or accruing as a result of such transfer. Further as per Section 50C(2) of the Income Tax Act, a reference to DVO is required in case an assessee contests the circle rate to be higher than the fair market value of the relevant capital asset. Since Assessing Officer neither assessed the value at the circle rate a;- mandated u/s 50 C (1), nor referred to DVO as per Section 50c(2), the assessment Order is erroneous. The income under assessed as a result of circle rate not been adopted is Rs. 9,75,96,000/- (Rs. 16,63,96,000/- Rs. 6,88,00,000/-). Tax on the same @20% comes to Rs. 1,95,19,2000/-. Total loss of revenue including surcharge & interest comes to Rs. 3,05,,19,060/- which makes the assessment order prejudicial to the interest of revenue.

5. *As per provisions of Section 50C of Income Tax Act, 1961, the Assessing Officer has to make a reference to DVO if the value taken by assessee is less than the stamp value. In the present case, no reference was made by the AO to DVO.*

6. *In view of aforesaid facts, in my view order of AO is erroneous and prejudicial to the interest of revenue.*

7. *Furthermore, vide appeal order no. 10459/17-18 dated 17.05.2019 of CIT(A), CIT(A) has given relief to the assessee on the issue of disallowance of deduction claimed u/s 54 of the Act against which appeal to ITAT is filed . Since, the issue of circle rate as fair market value as per Section 500(1) of the Act was not even discussed by AO in his assessment order nor adjudicated by CIT(A), the assessment order dated 27.12.2017 is proposed to be revised to the limited extent of being erroneous and prejudicial to the interest of the revenue.*

8. *Considering the above facts, it is proposed to initiate proceedings u/s 263 of Income Tax Act, and therefore you are hereby required to show cause as to why the assessment order passed by the Assessing Officer, DCIT Circle 22(2), New Delhi on 27/12/2017 for the A.Y. 2015-16 should not be set aside being erroneous so far as prejudicial to the interest of revenue to the extent of above.”*

2.1 The submissions of assessee were found not sustainable by the Ld Revisional Authority and it directed;

“11. In view of the above discussion, I am satisfied that the assessment order passed by the AO, ACIT, Circle 22(2), New Delhi on 27.12.2017 for Assessment year 2015-16, is not only

prejudicial to the interest of revenue but is also erroneous in so far as the AO has failed to make any enquiry on the applicability of section 50C, and refer the matter to the District Valuation officer for determining the correct market value of the property. Therefore, the said order is set aside with a direction to the AO to refer the matter to the District Valuation officer for determining the correct market value of the property and determine the sale consideration after giving due opportunity to the assessee. The Assessing Officer is further directed to pass a consequential order based on the result of such reference and determination of the sale consideration in terms of the provisions of Income Tax Act 1961.”

3. The Assessee has now raised the following grounds of appeal before this Tribunal:-

“1. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has further erred in holding the assessment order passed u/s 143(3) dated 27-12-2017 as erroneous and prejudicial to the interest of revenue on the applicability of section 50C and that too by recording incorrect facts and findings and in violation of principles of natural justice.

2. In any case and in any view of the matter, action Ld. Pr.CIT in passing the impugned order u/s 263 is bad in law and against the facts and circumstances of the case and is in violation of principles of natural justice and without appreciating/ considering the submissions of assessee.

3. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in setting aside the assessment order dated 27-12-2017 without any basis, material and evidences available on record and in violation of principles of natural justice.

4. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in passing the impugned order u/s 263, more so

A) when the assessment order which was sought to be revised, got merged in the order of Ld. CIT(A),

B) when the assessment order passed is itself bad in law and hence could not have been revised u/s 263 of Income Tax Act, 1961,

C) When the assessment record was not called and examined,

D) When the issue was considered in the assessment proceeding & a view was taken by the assessing officer,

E) When the action under section 263 was initiated & completed based on audit objection without application of mind,

F) When the order passed u/s 263 is barred by limitation”

4. Heard and perused the record.

5. On behalf of the Assessee it was submitted that the effective ground in this appeal is against the assumption of jurisdictional made by Ld. Pr. CIT u/s 263 and sending the matter back to the Id AO on the ground that the Id AO failed to make any enquiry on the applicability of section 50C as the Id AO failed to refer the matter to District Valuation Office (DVO) for determining the correct fair market value of the property. It was submitted that the impugned assessment order was neither erroneous nor prejudicial to the interest of revenue as the Id AO had examined in detail the question involved and accepting the fair market value of the impugned property at the transaction price. It was submitted that the Id. Pr. CIT had fallen an error in concluding that it was legally mandatory to make reference to DVO in all the cases. Ld. Counsel submitted that in fact the revisional power was exercised on the basis of audit objection and that itself made the impugned order of revisional authority not sustainable in law. It was also submitted that the Assessee had challenged the assessment order and the Id CIT(A) had set aside the assessment order and the questions examined by the Revisional Authority were very much in the powers of the Id CIT(A) to examine and consider enhancement u/s 251 of the Act. It was

submitted that all the grounds stood merged after determination of the appeal in favour of the Assessee.

5.1 As with regard to issue of applicability of section 50C being examined during the assessment the Id. Counsel took the bench across various papers in the paper book and submitted that the notice issued for examination of the case of the Assessee selected under limited scrutiny the Assessee had given complete details and referring specially to a letter dated 24.11.2017 available at page No. 76-83 of the paper book it was submitted that the Id AO was apprised why the capital gain has been calculated as regard to reference to the actual sale consideration of Rs. 6,88,00,000/- as against the stamp duty value of property of Rs. 16,63,96,000/-. It was submitted that the submissions were made as to why the fair market value of the property as certified by the Registered Valuer at Rs. 6.90 crores were justified. The Ld. Counsel submitted that the Assessee had submitted 3 registered sale deed copies of other properties in the locality to justify fair market value of the impugned property was comparable with the fair market value on similarly located properties. The copy of the sale deed at page no, 92-98, 99-110, 111-125 and 126-139 in the paper book were relied. It was submitted that in fact when audit objections were raised the Id AO defended the assessment order submitting that this aspect has been examined at length during the assessment. In this context it was submitted that the submission before the Id Revisional Authority are available at page No. 187-198 and 199-207 however, same were not duly considered. The Id counsel relied on the judgment of the Hon'ble Supreme Court in case of **Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 0083 (SC)** to contend that when matter has been examined at length of the Id AO and only because two views are possible and the ITO has taken one view, with which the Commissioner does not agree with, the assessment order cannot be considered to be erroneous order prejudicial to the interest of the revenue. In this context he also relied on the judgment of the **CIT**

Vs. Max India Ltd (2007) 295 ITR 0282 (SC), CIT and anr Vs. M/s. Chemsworth Pvt. Ltd (2020) 275 Taxmann 0408 (Kar), Referring specially to Jatindar Singh Chadha Vs. Pr. CIT (2019) 175 ITD 0032 (Del), he submitted that in this case similar question was involved and as the Id AO was satisfied from valuation of property and he did not refer matter to DVO, it was concluded that view taken by AO was one of the possible view and the revisional order was set aside.

5.2 He further referred to judgment in case of **Sangeeta Jain Vs. Pr. CIT (2018) 52 CCH 0101 (Del), Delhi Airport Metro Express (P) Ltd Vs. Pr. CIT (2017) 184 TTJ 32 (Del)** and the order of the **Kolkata Bench of ITAT in ITA No. 1378/Kol/2020 decided on 09.09.2021** to contend that there is no requirement under law to refer the valuation of property to DVO. He submitted that the use of word '*may*' in section 50C(2) of the Act is contentious issue and could not have been made basis for exercising revisional power u/s 263 of the Act. Reliance in this regard was also made on the judgment of **Jodhpur Bench in case of Meghraj Baid Vs. ITO (2008) 114 TTJ 084 (Jodh)** to submit that it is not incumbent on AO to refer the matter to DVO. Reliance was also placed on orders in **Eschmann Textures India Pvt. Ltd. Vs. CIT ITA No. 3616/2011 dated 21.03.2012 (Mum), ITO Vs. Shri Haresh Chand Agarwal, HUF ITA No. 282/2012 dated 20.12.2013 (Agra), Smt Shere Banoo Kajani Vs. DCIT ITA No. 243/2013 dated 28.03.2014 (Hyd)**.

5.3 He also relied on the judgment in case of **CIT Vs. Sohana Woolen Mills, (2008) 296 ITR 238 (P&H), Paramjit Singh Vs. Pr. CIT (2016) 48 CCH 0199 (Chd), M/s. Refex Industries Ltd Vs. DCIT ITA No. 972/2014 dated 09.09.2014 (Chennai), Sartaj Singh Vs. Pr. CIT (2016) 179 TTJ 17 (Asr) (UO), Jaswinder Singh Vs. CIT (2012) 150 TTJ 33 (Chd), Vikram Kaswan Vs. CIT (2016) 46 CCH 0561 (Chd)** to contend that audit objection cannot be basis of exercising revisional powers u/s 263. He specially referred to notice u/s

154 dated 18.01.2019 to contend that attempt was made on the basis of audit objection to rectify alleged mistake and revisional authority has merely tried to remedy the audit objection by exercising powers u/s 263. He specially referred to the fact that notices u/s 263 is verbatim reproduction of the audit objection.

5.4 It was submitted that by order dated 04.04.2019 the Id CIT(A) has deleted the addition while allowing the appeal. Ld. Counsel relied on the following judgment in support of his contention that when question was subject matter of appeal it is deemed that all the facts in regard to the question have been considered and dealt by the appellate authorities..:-

- Sonal Garments vs. Jt. CIT, (2005) 95 ITD 0363 (Mum)
- Saw Pipes Ltd. vs. Addl. CIT, (2005) 94 TTJ 1036 (Del)
- Sahara India Savings & Investment Corporation Ltd. vs. Asstt. CIT, (2004) 90 TTJ 0878 (Lkw)
- Sahara India Mutual Benefit Co. Ltd. vs. Asstt. CIT, (2002) 74 TTJ 0067 (All)
- Hooghly Mills Co. Ltd. vs. Asstt. CIT, (1999) 71 ITD 0264 (Cal)
- Sadhu Ram & Sons vs. CIT & Anr., (2007) 108 TTJ 0373 (Asr)
- Marico Industries Ltd. vs. Asstt. CIT, (2008) 115 TTJ 0497 (Mum)

5.5 On the other hand on behalf of Revenue it was contended that there is no illegality in exercise of jurisdiction by Ld. Pr. CIT. Ld. DR primarily relied the basic provisions of the Act and contended that Section 50C is a charging section and that there is no discretion with the AO but to refer the valuation to the DVO. It was contended that Ld. AO had not entered into the question of application of section 50 C therefore requested for exercising revisional jurisdiction.

6. Now, appreciating the matter on record and submissions raised this Bench is of firm view that it needs to enter into the question, as to if Section 50C mandatorily requires a reference from the AO to DVO, only, if that is statutory mandate in Section 50C or otherwise held by any judicial verdict of binding or even persuasive value. But apart from the Bare provisions the

Revenue does not rely any precedent where “may” in Section 50C of the Act is construed as “shall”. On the contrary, based on the judgments relied by Ld. Counsel for the assessee in **Monoj Kumar Biswas vs. PCIT (supra)**, **Jitindar Singh Chadha vs. Pr. CIT (supra)**, **Meghraj Baid vs. ITO**, **Eschmann Textures India Private Limited vs. CIT (supra)**, **ITO vs. Sh. Haresh Chand Agarwal, HUF (supra)**, **Smt. Shere Banoo Kajani vs. DCIT** it can be observed that as with regard to the word ‘may’ in section 50C(2) of the Act, requiring a reference to DVO, in case the AO does not agree with the explanation of assessee with regard to lower sale consideration than the value adopted by Stamp Valuation Authority, there are views on both the sides. In **Meghraj Baid vs. ITO** the Jodhpur Bench has considered word ‘may’ to be read ‘should’ so that the provision is not rendered redundant and accordingly remanded the matter to AO for proceeding. While in **Monoj Kumar Biswas**, Kolkatta Bench while dealing with the similar matter where Revisional Authority had exercised powers u/s 263 of the Act the Kolkata Bench observed that Ld. Revisional Authority was not justified in finding fault with the AO for not referring the valuation of the property to the DVO. Thus, as such there are two views to interpretation of word ‘may’ and when that is the case an order of Assessing Officer does not become erroneous and prejudicial to the interest of Revenue to be interfered by exercise of powers u/s 263 of the Act. Reliance can be placed on the judgment of Hon’ble Supreme Court of India in **Commissioner of Income Tax vs. Max India Ltd. (supra)** wherein the principles laid down in **Malabar Industrial Co. Ltd. vs. CIT (Supra)** have been reiterated. That being so, the impugned order is not sustainable.

7. However, what can be observed is that Ld. Revisional Authority concluded that the order passed by Ld. AO is without making proper enquiries or verification which should have been made in the light of the provisions of Section 50C of the Act. He accordingly in para no. 8 on page no. 22 of its order holds at “*it is clear that this is not the case of having different view. This is the*

case where the order has been passed by the AO without making inquiries or verification which should have been made”.

8. Further, what transpires from the record is that when the Additional Commissioner of Income Tax, Range-22, New Delhi directed the Assessing Officer to examine the facts in entirety and suggest remedial action in regard to audit objection. He observed, as is evident from the letter on record at page no. 294 to 297 of the paper book, that there was on record a reply dated 27.11.2017 of the assessee wherein he had given explanation of the reasons why provisions of Section 50C are not applicable and why the fair market value which is less than the circle rates should be accepted. The assessee has placed these submissions on record on paper book from page no. 76 to 139 along with copies of three registered sale deeds in the area in vicinity where property is situated to justify acceptance of fair market value instead of the circle rates.

9. It can be further observed that the Ld. AO vide communication dated 01.05.2019 informed Pr.CIT-08, New Delhi in regard to audit objections that the assessee had filed reply dated 27.11.2017 along with copies of valuation report, copies of registry of nearby areas and that having considered the same during original assessment proceedings the assessment order was passed and at the same time a request was made that audit objection be considered as settled.

10. It can be further observed that the same, assessing officer vide letter dated 14.06.2019, which is on page no. 298 of the paper book, made a proposal for initiating revision proceedings u/s 263 of the Act by a letter addressed to the Pr. Commission of Income Tax, Delhi-8. In this also the submissions of assessee as per reply dated 27.11.2017 are reproduced.

11. Thus, the findings of Ld. CIT(A) that Ld. AO had not considered the application of Section 50C of the Act by proper inquiries or verification is not sustainable. Indeed in the assessment order there is no discussion in respect of Section 50C but what transpires is that the case of assessee was selected for

limited scrutiny for examining deduction u/s 54 of the Act and based upon the analysis an addition was made by making a disallowance u/s 54 of the Act. Thus, even if there is no specific mention of the examination of case u/s 50C of the Act. The fact that in limited scrutiny assessee's claim of deduction u/s 54 was examined in itself is comprehensive and would cover all other aspects which entitle not only the right to deduction but also quantum of deduction.

11.1 Merely because the assessment order is silent on that aspect that cannot be a ground for invoking powers u/s 263. Clear distinction between inadequate inquiry and lack of inquiry has been examined by Hon'ble Delhi High Court in case of **Gee Vee Enterprises v. Additional Commission of Income-Tax, Delhi-1, (1975) 99 ITR 375**, where Hon'ble High Court has observed as under:-

"The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income- tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

11.2 Further in Universal Products P. Ltd. vs. CIT ITA No. 2056/Del/2013 relied the Hon'ble Delhi High Court Judgment In CIT v. Vikas Polymers 341 ITR 537 where it has held that :

"This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer was reflected in the assessment order, that would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision."

11.3 Hon Bombay High court in Income Tax Appeal No. 296 of 2013 (CIT v. Fine Jewellery (India) Ltd. [2015] 372 ITR 303 (Bom)) decided on February 3, 2015, following its earlier decision in Idea Cellular Ltd. V. Deputy CIT [2008] 301 ITR 407 (Bom) has taken a similar view that :

"... if a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it is not dealt with in the assessment order would not lead to a conclusion that no mind had been applied to it."

12. Even otherwise, the aforesaid discussion establishes that the Revenue Authorities were awoken of the issue due to audit objections alone. There is force in the contention of the Id. Counsel for the assessee that the notice u/s 263 of the Act is merely reproduction of the audit objections which have been mentioned in the letter dated 08.05.2019 by Additional Commissioner of Income Tax, Range-22, New Delhi addressed to Ld. AO with a copy forwarded to Pr. Commissioner of Income Tax, Delhi-8 for information. The copy of same on record at page no. 294 of PB was with direction to examine the facts in entirety and suggest remedial action, at the earliest. It appears that in furtherance of same the Ld. AO vide letter dated 14.06.2019, which the available at 298 of the PB, forwarded a proposal for initiating revision proceedings u/s 263 of the Income Tax Act, 1961 to the Pr. Commissioner of

Income Tax, Delhi-8, which is the present Revisional Authority and in this letter also the audit memo content have been reproduced, which is almost verbatim to the notice. In fact in this letter dated 14.06.2019 and a similar letter dated 25.06.2019 available at page no. 302. The AO herself makes a request for initiation of proceedings u/s 263 of the Act, observing that the assessment order passed is not only erroneous but also prejudicial to the interest of the Revenue. Pertinent to mention is the fact that in the proposal letter dated 25.06.2009 available at page no. 306 of PB Ld. AO also mentioned that since appeal against the assessment order has been allowed by Ld. CIT(A) the assessment order is liable to be revised to the limited extent being erroneous and prejudicial to the interest of the Revenue as the issue of circle rate as fair market value has not been discussed in the assessment order.

13. Thus, there is substance in the argument of Ld. AR that merely on the basis of audit objection powers u/s 263 could not have been exercised. The impugned order u/s 263, does not indicate that the power was exercised on the basis of a finding of the assessment order being erroneous and prejudicial to the Revenue by examining facts and record by the Id. Revisional Authority beyond the audit objections rather it is obvious that in attempt to meet the audit objections and to take them to a reasonable end, the power u/s 263 was exercised and same cannot be sustained.

14. Now taking up the argument of Ld. Counsel for the assessee that powers u/s 263 could not be exercised as all facets of claim of deduction under capital gains on sale of capital assets, got merged in appeal order passed by Ld. CIT(A), as being First Appellate Authority it had power of enhancement on issues which was not considered by Ld. AO in assessment proceedings. It can be appreciated from the copy of order dated 04.04.2019 of Id. CIT(A) in appeal against assessment order available at page no. 178 to 184 of the paper book that assessee had raised following grounds of appeal :-

1. *Based on the facts and circumstances of the case, the Appellant respectfully submits that the Ld. AO has erred in law and on facts in making an disallowance of the whole capital gain amounting to Rs. 5,63,74,550/- claimed by the assessee u/s 54 of the Income Tax Act, 1961 and the same is added- back to the income of assessee.*

2. *Based on the facts and circumstances of the case, the Appellant respectfully submits that the Ld. AO erred in calculating tax and tax demand and thus it is a mistake apparent from record u/s 154 of the Act.*

3. *Based on the facts and circumstances of the case, the Appellant respectfully submits that the Ld. AO erred in holding that the Appellant has furnished inaccurate particulars in income and thus initiating penalty proceedings u/s 271.*

15. Hon'ble Supreme Court in the case of **Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688/[1990] 53 Taxman 85** held as under:-

"5. In CIT v Kanpur Coal Syndicate, a three Judge bench of this Court discussed the scope of section 31(3)(a) of the Income Tax Act, 1922 which is almost identical to section 251(1)(a). The court held as under: (ITR p.229) "If an appeal lies, section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under Section 31(3)(a) in disposing of such an appeal the AAC may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment, The AAC has, therefore, plenary powers in disposing of an appeal. The scope of his power is co- terminus with that of the ITO. He can do what the ITO can do and also direct him to do what he has failed to do".

15.1 Therefore, where the Ld. CIT(A) was examining the issue of disallowance of capital gain claimed by assessee u/s 54 of the Act. The question of not only eligibility but even quantum of deduction was under examination. Section 50C is one of the facets of the calculating quantum of deduction allowable to assessee u/s 54 of the Act and not a charging section alone.

16. Thus, when at one hand, the matter on record suggests Ld. Assessing Officer had gone into the question of applicability of Section 50C and on other hand ld, CIT(A) has heard the matter determining the issue deduction available u/s 50C, in favour of assessee by order dated 04.04.2019 then by virtue of doctrine merger the order of ld. AO stood merged in the order of Ld. First Appellate Authority dated 04.04.2019. Fact of decision of appeal before CIT(A) and pendency of appeal before Tribunal, was mentioned by Ld. AO in its letter dated 25.06.2019 available at page no. 298 of the paper book for forwarding proposal for initiating revision proceedings u/s 263, then Ld. Revisional Authority was not justified in exercising powers u/s 263 in regard to assessment order dated 27.12.2017. As by then Revenue had approached the Tribunal against the order of ld. CIT(A) and the Revenue had availed alternate remedy of challenging the order of ld. CIT(A) wherein in regard to the present controversy also grounds were available, as to if the Tax authorities below had fallen in error in not considering applicability of section 50C of the Act or that reference to DVO was mandatory.

17. In the light of aforesaid discussion of fact and law the ground raised deserves to be allowed. Accordingly **the appeal is allowed** and the impugned order dated 30.03.2021 is set aside.

Order pronounced in the open court on 10th August, 2022.

Sd/-

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 10th /08/2022

A K Keot/

Binita, Sr. P.S.

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi