

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

**(ITA No. 95/RPR/2022)**  
(Assessment Year: 2017-18)

Shree Krishna Colonisers 0, Nemichand Gali, Ganj Para ward No.5, Ram Sagar para, Raipur, 492001, Chhattisgarh	V s	Principal Commissioner of Income Tax- PCIT, Raipur-I
<b>PAN: ABFFS7335G</b>		

**(ITA No. 96/RPR/2022)**  
(Assessment Year: 2017-18)

Shree Krishna Builders 5/425, Nemichand Gali, Ramsagar Para Ward, Raipur, Chhattisgarh		Principal Commissioner of Income Tax- PCIT, Raipur-I
<b>PAN: AACFT1716A</b>		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri R. B. Doshi, CA
राजस्व की ओर से /Revenue by	:	Smt. Ila M. Parmar, CIT-DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	09.10.2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	14.12.2023

**आदेश / ORDER**

**Per Arun Khodpia, AM:**

The aforesaid two appeals are filed by two Assessee's against two separate orders of Principle Commissioner of Income Tax, Raipur-1, both dated 25.03.2022, which in turn arisen from the order u/s 143(3) passed by Assistant Commissioner of Income Tax, Circle-1(1), Raipur, both dated 30/12/2019 for the relevant assessment year 2017-18.

2. As informed at the beginning of the hearing by the Ld. AR of the assessee that these two cases belong to two Assessee's but from one group under same management, having common and identical issues except the quantum of additions, thus, for the sake of convenience and brevity, these matters are heard together, accordingly we are disposing off the issues raised against the impugned orders, under this common order:

**First, we shall be taking ITA No.95/RPR/2022, pertains to the assessee "Shree Krishna Colonisers", as the lead case, result of which shall mutatis mutandis apply in the case of ITA No. 96/RPR/2022.**

3. The Grounds of Appeal raised by the assessee in ITA No. 95/RPR/2022 are extracted the same as under:

1. In the facts, circumstances and material on all records relating to the assessment proceedings under the Income tax Act, 1961, the order u/s 143(3) dated 30/12/2019 is not erroneous in so far as it is prejudicial to the interests of the revenue.
2. In the facts, circumstances and material on all records relating to the assessment proceedings under the Income tax Act, 1961, the learned PCIT has erred to hold that in the order u/s 263 dated 25/03/2022, difference in column no. 7 in para no.2 which reckons to Rs.2,80,08,200/-, is actual expenditure incurred by the assessee, as per section 69C or is unexplained expenditure incurred by the Assessee.
3. In the facts, circumstances, and material on all records relating to the assessment proceedings, the A.O. had passed the order u/s 143(3) dated 30/12/2019 after taking into account all relevant material which he gathered and had not omitted to assess any

amount accrued, due or received on which the Assessee was liable to assessment.

4. That order u/s 263 is illegal and not as per the provisions of the Income tax Act 1961, due to illegal and invalid reference made by the A.O. u/s 142A, reference made without any basis of material for making reference, without existence of relevant facts for application of section 142A, without relevance of valuation got done at market value for examination of expenditure incurred at cost or having assumed that the DVO's report itself is relevant material for assessment of difference as alleged
5. The learned PCIT has initiated section 263 merely to lift time limitation u/s 153 and grant unfettered time and power to the A.O. to conduct roving enquiry so that it may any how come out something out of Assessee's no tax liability, at the cost of undue harassment of tax assessment.
6. The assessee humbly prays that he may be allowed to add, amend or alter any ground of appeal at the time of hearing.

4. The Brief facts of the case are that the assessee is a partnership firm deriving income from real estate business. Return for the AY 2017-18 was filed on 25.10.2017 declaring total income of Rs. 6,18,49,750/-. A Survey u/s 133(A) was conducted at the premises of concerns of the assessee on 27.01.2017. Later on, the case of the assessee was selected for scrutiny through CASS under the category complete scrutiny. Statutory notices were issued and served on the assessee. In response to the notices, the assessee had submitted replies which were duly considered by the Ld. AO. During the survey proceedings u/s 133A, certain material in the form of a Classmate copy

named Annexure/B-2 (Page 1-21) has been found and impounded from the premises from Krishna Grand City, Kohka, Bhilai. The impugned document was shown to Shri Sunil Kumar Taparia (Director of M/s Taparia Realtors Pvt. Ltd., who is one of the partners in M/s Shree Krishna Colonisers i.e., the Assessee). Further, during the survey proceedings, certain discrepancies were noted in the WIP (Work in Progress) of the assessee, Shri Sunil Kumar Taparia in his statement on oath on 27.01.2017 accepted that these are out of the books of account and, therefore, he has surrendered an amount of Rs. 6,62,66,000/- as undisclosed income in this head. Further, in statement dated 30.01.2017 Mr. Taparia has accepted a surrendered amount of Rs. 28,37,645/- in the hands of M/s Krishan Colonisers. Subsequently, the assessee has retracted from the above statement and has submitted that the entries found in the loose papers have been entered in the respective books of account and submitted that the ledger account in respect of entries made. The retraction of the assessee was considered as change of opinion to evade tax and penalty proceedings; therefore, the AO has added the amount of Rs. 28,37,645/- to the income declared by the assessee and has culminated the assessment. While finalizing the assessment order Ld. AO recorded that the assessee has raised certain observations regarding valuation of Work in Progress (WIP), which has been kept on record. A reference u/s 142A(1) of the Act has been made vide later dated 29.12.2019 to the valuation officer, Income Tax Department, Bhopal for elucidation of valuation of immovable property for assessment, with a request to submit the report in 45 days. The

issue pertaining to discrepancies found in WIP in respect of the assessee was kept in abeyance to be decided after the receipt of the record of the Departmental Valuation Officer, Bhopal.

5. The case of the assessee was subsequently examined by the Ld. PCIT, who observed that during the course of assessment proceedings, the AO had made reference u/s 142A(1) of the I.T. Act for elucidation of valuation of immovable property in the case of M/s Shree Krishna Colonisers to the valuation officer of the Income Tax department. It was noticed by the Ld. PCIT that the issue pertaining to discrepancies found in WIP in respect of the assessee were left open by the AO to be decided after the receipt of the report of DVO, Bhopal. From the case records, Ld. PCIT has further gathered that on receipt of the DVO's report dated 24.12.2020, there was a huge difference in valuation as per books and DVO's report as on dated of survey. Considering such facts, a show cause notice u/s 263 dated 03/02/2022 was issued to the assessee to furnish its replies in support of its claim. In response assessee has submitted its replies to the Ld. PCIT on various dates i.e., 08.02.2022, 09.02.2022, 16.02.2022, 28.02.2022, 01.03.2022, 08.03.2022 and 12.03.2022. All the replies of assessee were considered and reproduced by the Ld. PCIT in order u/s 263, however, he was not impressed by the contentions raised by the assessee, supported with explanations and case laws, so finally, invoking the provisions of Explanation-2 of section 263 and has set aside the assessment order passed u/s 143(3) by the Ld. AO,

considering the same as erroneous in so far as it is prejudicial to the interest of the revenue, with the directions to examine the issue afresh and to pass a fresh assessment order, providing proper opportunity of being heard to the assessee.

6. Aggrieved by the aforesaid order of Ld. PCIT, now the assessee has preferred the present appeal before us.

7. Ld. AR on behalf of the assessee before us, has furnished a written synopsis, the same is extracted as under:

**M/S Shree Krishna Colonisers, Raipur**  
**AY 2017/18**  
**ITA No. 95RPR/2022 (Assessee)**

**Facts of the case**

1. Survey u/s 133A conducted on 27.01.2017 during which the projects under construction were got valued by the Department from approved valuer Shri Manish Pilliwar. The projects got valued were "Krishna Grand City, Bhilai", "Krishna City, Bhatapara" & "Krishna Apartment, Baloda Bazar". Details of cost debited in books and the estimate of valuer are as under: -

<i>Project Name</i>	<i>Cost of WIP as per books of accounts Rs.</i>	<i>Value estimated by registered valuer Mr. Pilliwar Rs.</i>
<i>Krishna Grand Cit , Bhilai</i>	<i>4,23,67,000/-</i>	<i>8,76,47,000/-</i>
<i>Krishna Cit , Bhatapara</i>	<i>4,71,41,000/-</i>	<i>6,21,41,000/-</i>
<i>Krishna Apartment, Baloda Bazar</i>	<i>1,46,19,000</i>	<i>20,65,000/-</i>
<i>Total</i>	<i>10,41,27,000/-</i>	<i>15,18,53,000/-</i>

Copy of valuer's report is at page no. 42 to 54, 82 to 92 and 123 to 127 of PB.

2. During assessment proceedings, assessee objected to valuation done by the Department's valuer Shri Manish Pilliwar. The assessment order came to be passed on 30.12.2019. However, in view of objection raised by assessee, the AO made reference u/s 142A(l) to DVO on 29.12.2019 i.e., just one day prior to passing of the assessment order.

The AO completed assessment u/s 143(3) accepting the value of WIP as per books, subject to a note that the issue of difference in WIP would be decided after receipt of the DVO's report.

3. DVO submitted his report dt. 21.12.2020 (Krishna Grand City), 11.01.2021 (Krishna City) & 21.01.2021 (Krishna Apartment) as per which the valuation came as under: -

Project Name	WIP as per books as on 27.01.2017	Value estimated by DVO (Rs.)	Difference (IRS.)
Krishna Grand Cit , Bhilai	4,23,67,000/-	6,28,45,900/-	2,04,78,900/-
Krishna City, Bhatapara	4,71,41,000/-	5,51,60,000/-	80,19,000/-
Krishna Apartment, Baloda Bazar	1,46,19,000/-	1,41,29,300/-	(-)4,89,700/-
Total	10,41,27,000/-	13,21,35,200/-	2,80,08,200/-

Copy of DVO's report at PN 77 to 81 (Krishna Grand City), PN 116 to 122 (Krishna City) & PN 154 to 161 (Krishna Apartment).

4. On the basis of DVO's report, Id. Pr. CIT issued show cause notice u/s 263 dt. 03.02.2022 mentioning that difference between the DVO's estimate and the value reflected in books has resulted into error and prejudice within the meaning of sec. 263. Ignoring the submissions made by assessee, Id. Pr. CIT set aside the assessment order and directed the AO to frame fresh assessment in the light of DVO's report.

#### **Submission of the assessee**

1. Jurisdiction u/s 263 invoked by Id. Pr. CIT on the basis of difference found between DVO's valuation and the value declared in the books. Id. Pr. CIT relied upon definition of "record" given in Explanation — 1 (b) to sec. 263(1) claiming that the DVO's report, although received after completion of assessment, forms part of "record" as the DVO's report was available at the time of examination of Id. Pr. CIT.

2. *The exercise of revisional jurisdiction u/s 263 is thus solely on the basis of DVO's report.*

3. Settled position of law

*For exercising jurisdiction u/s 263, impugned order should be erroneous, and error should have resulted into prejudice to Revenue. The error in assessment order and prejudice to Revenue is required to be established by Id. Pr. CIT, before the assessment order can be revised u/s 263. Error and prejudice should be proved beyond doubt, and it should not be left to be decided by AO.*

4. No error or prejudice established by Id. Pr. CIT: assumption of jurisdiction u/s 263 vitiated

i) *DVO's report not binding on AO*

- *Section 142A (7) provides that the AO "may" take into account the DVO's report in making assessment, after giving assessee an opportunity of being heard. Since discretion is given to AO, DVO's report is not binding on him.*
- *It was held in ACIT vs Mfar Hotels & Resorts (P.) Ltd. in ITA no. 66 & 67/Coch/2017 dated 13.03.2019, (para no. 7.6), that DVO's report is not binding on AO.*
- *Guidelines for Valuation of Immovable Properties 2009*

*Chapter 9 (Coordination with Assessing Officer), point (v) of guidelines states that **report of DVO is not binding and therefore, the affected person should be confronted with it before same is utilized** against him. It also states that AO should allow reasonable opportunity of being heard to such person and consider all his objection, against the valuation report in accordance with law.*

*-Pratap Vitthal Bandal vs UOI (2020) 116 taxmann.com 919 (Bom.), on sec. 142A (7).*

*-CIT vs Naveen Gera (2010) 328 ITR 516 (Del)*

ii) *After allowing assessee opportunity in terms of sec. 142A(7), AO to take into consideration various objections that may be raised in respect of DVO's report. **Unless objections of assessee are considered and decided upon, no action can be taken in the matter of assessment.** Therefore, whether any addition is required or not, can be concluded only after deciding upon the objections of assessee.*

- iii) *DVO's report is not final. Unless objections of assessee were invited in terms of sec. 142A (7) & decided by AO/ Id. Pr. CIT/ DVO, no decision could be arrived at as to whether any addition was required which not having been made, resulted into prejudice to Revenue.*
- iv) *When the difference in valuation may vary, prejudice to Revenue cannot be established before deciding upon objections of assessee. In this process, involvement of DVO may also be required.*
- v) *Against the value estimated by DVO, assessee submitted objections giving complete details, which is placed at PN 162 to 195 of PB,*
- vi) *described in detail in para no. 6 to 9 infra. Such letters of objection were on record when Id. Pr. CIT examined.*
- vii) *Ld. Pr. CIT was bound to decide upon the objections of assessee before he could conclude on "error" and "prejudice" in terms of sec. 263.*
- viii) *Perusal of revision order shows that Id. Pr. CIT has not dealt with any of the objections raised by the assessee and therefore, it was not established whether any "error" was there in the assessment order, which resulted into prejudice to Revenue. Reliance on: -*
- *Metacaps Engineering & Mahendra Construction Co. (JV) vs CIT in ITA no. 2895/Mum/2014 dated 11.09.2017, relevant findings at para no. 13 & 14 of order.*
  - *ITO vs DG Housing Projects Ltd. (2012) 343 ITR 329 (Del.), relevant findings at 16, 17 & 19 of order.*
  - *DIT vs Jyoti Foundation (2013) 357 ITR 388 (Del.), relevant findings at para no. 5 of order, following DG Housing's case.*
- ix) *In view of this, revision order passed u/s 263 is illegal & unsustainable.*

## **5. Objections taken by assessee**

(i) *Detailed, item-wise objections filed with DVO. DVO considered only some of them and rejected the remaining.*

(ii) *Letter filed before AO, who gave opportunity to assessee after receipt of DVO's report, pointing out mistakes in DVO's report. Letter dt. 14.02.2021 & 26.07.2021 (two letters of 26.07.2021) placed at PN 162 to 192 of PB. Contents described in para no. 6 to 10 below.*

(iii) Similar objections taken before Id. Pr. CIT vide letter dated 08.02.2022 & 08.03.2022, described in detail in para no. 6 to 10 below.

(iv) Ld. Pr. CIT did not deal with these objections, nor did he give any reason as to why such mistakes do not require consideration.

(iv) Assessment order neither proved to be erroneous nor prejudice to Revenue established by Id. Pr. CIT. Revision order illegal.

**6. Regarding difference in valuation of "Krishna Grand City, Bhilai" (Rs.2,04,78,900/-)**

i) Department's valuer Mr. Manish Pilliwar valued entire project (including sold part) at Rs. 30,61,89,900/- (as reduced by DVO) while total cost debited in books of assessee is Rs. 31,04,91,251/- . No excess expenditure.

ii) **Differences requiring further reduction in valuation of "Krishna Grand City, Bhilai:**

Particulars	As per report of Mr. Pilliwar (Rs.)	Reduction allowed by DVO by (Rs.)	Difference still requiring reduction (Rs.)	Reference
Painting, tiles, electrical fitting etc. not done in under construction units	1,27,50,810/-	43,47,331/-	84,03,479/-	Details submitted before DVO & AO vide letter dated 14.2.2021, at PN 163 of PB. Bills of these works done after the date of survey submitted before DVO.  Submission reiterated

				vide letter dt. 08.02.2022 & 08.03.2022 filed before Pr. CIT (PN 9 to 16 & 27 to 33 of PB respectively), relevant explanation on PN 14 & 30 of PB.
Development cost including cost of fountain, site development, garden lights, landscaping etc.	1,50,00,000/-	93,75,250/-	39,77,250/-	<p>All these items related to sold units, already considered in development cost of sold units but erroneously added again in unsold units as well. Details of expenses at PN 52 of PB, depicting double expenses. Item at sr. no, 8, 20-22, 31-34, 37 &amp; 42 in first chart are duplicate of items at sr. no. 4, 6 to 13 of second chart. Claim made before vide letter dated 14.02.21, at PN 164 of PB, para no. 5.</p> <p>Submission reiterated vide letter dt. 08.02.2022 &amp; 08.03.2022 filed before Pr. CIT (PN 9 to 16 &amp; 27 to 33 of PB respectively), relevant explanation on PN 14 &amp; 30 of PB.</p>
Adjustment on account of cost variation between 2011 to 2017	0/-	32,85,698/-	17,47,267/-	DVO allowed cost variation @ 4.72% (PN 78 of PB, sr. no. 8, Rs. 32,85,698/-) whereas average cost index increased by 7.23% from 1.4.2011 to Jan. 2017 (PN 165 of PB,

				para no. 6). Difference of 2.51% will further reduce estimate of DVO by Rs. 17,47,267/-.
				Submission reiterated vide letter dt. 08.02.2022 & 08.03.2022 filed before Pr. CIT (PN 9 to 16 & 27 to 33 of PB respectively), relevant explanation on PN 15 & 31 of PB, para no. (6).
<b>Total</b>			<b>1,41,27,996/-</b>	

### **7.Regarding difference in valuation of "Krishna Apartment, Balodabazar"**

Differences explained in letter dated 26.07.2021 filed before AO & DVO, at PN 182 to 192 of PB.

- i) Deduction on account of architectural & design work, Rs. 9,69,800/-, PN 183 of PB, para no. 1.
- ii) Deduction on account of "other development works, Rs. 3,31,594/-, PN 183 of PB, para no. 2 (below).
- iii) Deduction on account of tubewell cost, Rs. 1,30,330/-, PN 183 of PB, para no. 3 (below).
- iv) Deduction on account of lifting charges, Rs. 4,20,504/-, PN 184 of PB, para no. 4.
- v) Deduction on account of different items, Rs. 8,13,900/-, PN 184 of PB, para no. 5.
- vi) Deduction on account of flooring cost, Rs. 8,55,712/-, PN 184 & 195 of PB, para no. 6 & 4 respectively.

Submission reiterated vide letter dt. 08.02.2022 & (08.03.2022 filed before Pr. CIT (PN 9 to 16 & 27 to 33 of PB respectively), relevant explanation on PN 15 (top portion) & 30 of PB.

### **8.Regarding difference in valuation of "Krishna City, Bhatapara"**

Differences explained in letter dated 26.07.2021 filed before AO & DVO, at PN 174 to 181 of PB.

**9. Deduction on a/c of contractor's profit not allowed**

*DVO's report is based on item rate basis/contract rate whereas assessee being builder, substantial savings of 15% on account of contractor's profit should have been deducted. Deduction of Rs. 1,98,20,280/- being 15% of Rs. 13,21,35,200/- (value worked out by DVO). Submission made before Id. Pr. CIT vide letter dated 08.02.2022 & 08.03.2022, at PN 9 to 16 & 27 to 33 of PB, relevant claim at PN 15 & 30 of PB, para no. (5) of letters.*

**10. Difference less than 15% is to be ignored**

*(i) Ahmed Shareef vs DCIT (2021) 189 ITD 522 (Bang.) - Difference between cost of construction shown by assessee and as determined by AO being less than 15 per cent, same is to be ignored for purposes of addition, more so when the construction was spread over a period of seven years.*

*(ii) Bimla Singh vs CIT (2009) 308 ITR 71 (Patna)*

*11. In view of above, order passed u/s 263 is illegal & unsustainable.*

8. Based on aforesaid written submissions, it was the prayer of the Ld AR of the assessee that, the order passed u/s 263 is illegal and unsustainable, therefore, the same is liable to be quashed.

9. Ld. AR also placed his reliance on following judgments:

(i) *Pratap Vitthal Bandal vs UOI (2020) 116 taxmann.com 919 (Bom.), on sec. 142A (7).*

*As is clear from sub-section 7 of section 142A of the Act, this provision provides that the Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment. Thus, even this provision enjoins a duty on the Assessing Officer to hear the assessee on the report of the DVO before he can act upon the same.*

(ii) *CIT vs Naveen Gera (2010) 328 ITR 516 (Del)*

10. It was further submitted by the Ld. AR that the assessee has raised objections against the report of the DVO's, which were raised before the AO after completion of the assessment when the report of the DVO's was confronted to the assessee, objections were raised before the Ld. PCIT also but Ld. PCIT who was bound to decide upon and dispose off such objections has refrained to do so, therefore, the conclusion that the order of Ld. AO was erroneous as well as prejudicial to the nature of revenue was not established. Ld. AR placed his reliance in this respect from the following judgment.

Metacaps Engineering & Mahendra Construction Co. (JV) vs CIT  
in ITA no. 2895/Mum/2014 dated 11.09.2017, relevant findings at  
para no. 13 & 14 of order:

13. *However, we find that the CIT without pointing out any infirmity in the reply/explanations of the assessee, and as to why the same could not be accepted had rather hushed through the matter and concluded that the assessment order passed by the AO. was found to be erroneous and prejudicial to the interest of the revenue.*

14. *We are of the considered view that it is obligatory on the part of the CIT to consider the reply of the assessee in respect of the issues on which the order of the A.O. is sought to be revised by him. We are of the considered view that the CIT after receiving the reply/objections of the assessee in respect of the issues on which the order of the A.O. is sought to be revised, in all fairness, is required to deliberate on the same, and thereafter on the basis of the logical reasoning conclude as to whether in the backdrop of the reply/ explanations of the assessee can the order of the A.O. be characterized as both erroneous and prejudicial to the interest of the revenue.*

*We are of the considered view that in the absence of clear observations of the CIT as to how the order of the A.O. after*

*considering the explanation/objections filed by the assessee was found to be erroneous in respect of the said respective issues, thus, can safely be held to have failed the fundamental requirement for valid assumption of jurisdiction as per the mandate of law.*

- ITO vs DG Housing Projects Ltd. (2012) 343 ITR 329 (Del.), relevant findings at 16, 17 & 19 of order.

16. *The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction u/s 263 of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question.*

17. *An order or remit cannot be passed by the IT to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the CIT hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous.*

18. *The CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing officer was erroneous.*

- DIT vs Jyoti Foundation (2013) 357 ITR 388 (Del.), relevant findings are at para no. 5 of order, following DG Housing's case.

11. Ld. CIT DR on the other hand has vehemently supported the order of Ld. PCIT u/s 263 and submitted that the AO has passed the order without considering the report of DVO, therefore, the same is undoubtedly an erroneous order and the differential valuation in the books of valuation of DVO itself justifies that the order of AO was prejudicial to the interest of revenue, thus the prompting of provision of section 263 to initiate the revisionary proceedings against the assessee was justified and correct course of action

adopted by the Ld. PCIT. The order of Ld. PCIT, thus, is justified on facts as well as in terms of provisions of law, hence, the same merits to be upheld.

12. We have considered the rival contentions, perused the material available on record in his case laws raised before us for our consideration. In the present case the controversy raised by the assessee was w.r.t. initiation of revisionary proceedings u/s 263 based on the DVO's report called for under the provisions of section 142A(1) by the Ld. AO, which was received after the culmination of the assessment. In this respect, the assessee has contended that DVO's report is not binding on AO to be followed to support this contentions reliance was placed on order of the coordinated bench of ITAT, Cochin wherein in ITA No.66/Coch/2017 for the AY 2002-2003 vide order dated 13.03.2019, it was the observation of bench that *"The AO had stated that the DVO's report is binding on him, this statement of AO is incorrect. The report of DVO's is only an advisory in the nature and not binding on the AO."* Ld. AR further submitted that as per section 142A (7), the AO may consider the DVO's report in making assessment, but only after giving assessee an opportunity of being heard. No such opportunity during the assessment proceedings were provided to the assessee, however, after completion of the assessment proceedings the report of DVO almost after one year has been provided to the assessee i.e. the reference was made by the Ld AO on 29.12.2019 and the reports were furnished by the DVO on 21.12.2020, 11.01.2021, 21.01.2021, copies

of report furnished at page 77-81, 116-122 and 154-161 of the Assessee's paper book, this was again in violation of provisions of section 142A(6), wherein the report of DVO must reach the Assessing Officer within the period of six months from the end of the month in which a reference is made under subsection (1), for completeness and for interpretations, provisions of section 142A are extracted as under:

*142A. (1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.*

*(2) The Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.*

*(3) The Valuation Officer, on a reference made under sub-section (1), shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).*

*(4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.*

*(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.*

*(6) The Valuation Officer shall send a copy of the report of the estimate made under sub-section (4) or sub-section (5), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1).*

*(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.*

13. In backdrop of aforesaid observations, certain admitted facts of the case are that the Ld PCIT has not dealt with the objections raised by the assessee regarding anomalies in the report of the DVO, which was the sole basis for invoking and initiating the proceedings u/s 263. Moreover as per subsection (4) of section 142A, it was incumbent upon the valuation officer to “*The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, **after giving an opportunity of being heard to the assessee.***”, apparently no such opportunity was provided to the assessee. Further as per sub section (6) of section 142A “*The Valuation Officer shall send a copy of the report of the estimate made under sub-section (4) or sub-section (5), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1)*”, in present case the report of the DVO was sent to department way beyond the stipulated time period which shows complete violation of provisions of section 142A. Under such circumstances the report of DVO barred by limitation should be categorized as non-est, thus, cannot be the basis for revisionary proceedings u/s 263.

14. Our view is supported by the decision of coordinate bench of ITAT Hyderabad in the case of Shri Zulfi Revddjee vs ACIT in ITA No. 2415/HYD/2018 vide order dated 05/09/2019, wherein the tribunal has held as under:

7. Having regard to the rival contentions and the material on record, we find that the relevant A.Y before us is A.Y 2013-14 and the return of income was filed on 30.09.2013. Therefore, 21 months from such date would expire on 31.3.2016. Thus, the assessment order u/s 143(3) was required to be passed by 31.03.2016 but since the AO has made a reference to the valuation officer u/s 142A of the Act, vide letter dated 19.02.2016, and the valuation report was filed on 20.7.2017, the said period will have to be excluded for determining the time limit. However, the question before us is the period allowed to the DVO ITA No 2415 of 2018 Zulfi Revdje Hyderabad.

to submit the report. U/s 142A of the Act, the valuation report has to be submitted within six months from the date of the receipt of the reference. Admittedly, in the case before us, the valuation officer has submitted the report beyond a period of 15 months. Whether this period can be enlarged or condoned is to be seen. As rightly pointed by the learned Counsel for the assessee, the word used in sub-section 6 of section 142A is "shall" and in other sub sections, the word used is "may". The Hon'ble Delhi High Court in the case of B.K. Khanna & Co. vs Union Of India And Others on 14 September, 1984 (Supra) has clearly held that where the words "may" and "shall" are used in various provisions of same sections, then both of them contain different meaning and the word "shall" shall mean "mandatory". As argued by the learned Counsel for the assessee, the AO was required to call for a report from the valuation officer within six months from the date of the reference and the valuation officer was bound to give such a report with such prescribed period. Further, as seen from the assessment order, the AO had directed the valuation

*officer to give the valuation of the property as on 8.2.2010, whereas the valuation officer has given the report as on the date of the execution of the sale deed. Therefore, the DVO has clearly not followed the directions of the AO and also not followed the timeline fixed under the Act. When it is mandatory for an officer to follow the timeline prescribed under the Act, such delay cannot be condoned. Therefore, we agree with the contentions of the learned Counsel for the assessee that the report of the Valuation Officer has to be filed within the time given u/s 142A(vi) of the Act and therefore, the assessment order passed on the basis of such report of Valuation Officer beyond the time limit is not sustainable. Therefore, we allow the assessee's appeal and the assessment order is set aside.*

15. The interpretations in the order of ITAT Hyderabad in the case of Shri Zulfi Ravdjee (supra) is based on principle of law laid down by Hon'ble Delhi Highcourt in the case of [B.K. Khanna & Co. vs Union Of India And Others](#) on 14 September, 1984 reported in 156 ITR 796, wherein Hon'ble Highcourt has categorically interpreted the seriousness of word 'Shall' placed in the sections and provisions of the Act and the significance and prerequisite of its mandatory compliance. Non adherence to such strict mandatory provision thus entails the proceedings illegal and the outcome as not est.

16. The issue regarding valuation report without adhering to prerequisite conditions of prescribed in relevant section renders the reopening

assessment bad has been discussed in the case of **Reliance Jute and Industries Ltd. vs Income-Tax Officer and Ors dated 23 March, 1984 reported in 1984 150 ITR 643 Cal**, wherein Hon'ble Calcutta High court had held that provisions of law need to be followed strictly, failure of compliance to prerequisite essential conditions tantamount the valuation as incompetent, so as the assessment based on such report. The relevant observations are as under:-

*5. Dr. Pal, in support of his above contention, has relied on the decision in the case of [CIT v. Ranchhoddas Karsondas](#), to show that an assessee is entitled to file his return any time before his assessment, provided there is no time-limit. Their Lordships of the Supreme Court while deciding that case observed that even a return filed on the last day could not be ignored on the ground that the Department would be driven to complete the assessment proceeding within a few hours or lose the right to send a notice under [Section 34\(1\)](#). The argument of inconvenience was held to be not a decisive argument and there were means and methods which could be availed of by the Department to save the bar of limitation from becoming operative. It was further pointed out by their Lordships of the Supreme Court that it was for the courts to administer the laws as they stood and they were seldom required to be astute to defeat the law of limitation. Dr. Pal relied on this decision to counter the submissions on behalf of the respondents that the ITO had no other alternative but to complete the assessment without waiting for the valuation report to avoid the bar of limitation. In the facts and circumstances of the case, it is, however, found that sufficient time was still left for the*

*Department to take steps to get the valuation report and to complete the proceedings within the statutory time-limit but failure of the Department to take necessary steps cannot be rewarded with a premium at the cost of the assessee. Lastly, reliance was placed in the case of Uma Debi Jhawar v. WTO , where M.N. Roy J. held in a proceeding for making assessment if pending, a reference to the Valuation Officer could be made. The reasons given in the said decision make it amply clear that where the assessment is completed and proceeding for reopening of such assessment was not in existence, the valuation became incompetent. Applying the said principles to the facts of the present case, it was argued on behalf of the petitioner that a valuation reference, even if validly made, lost its utility and should not be allowed to continue and is liable to be quashed. On behalf of the respondents, Mr. Balai Pal appearing with Mr. Rupen Mitra contended that the cases cited on behalf of the petitioner were distinguishable on facts inasmuch as all those cases referred to valuation after completion of the assessment and, as such, can have no application to the facts of the present case. In fact, it was repeated that the ITO was compelled to complete the assessment to avoid the same getting time-barred.*

*6. Reliance was also placed on the decision in the case of Satyendra Chunder Ghosh v. WTO , where it was held by B.C. Basak J. that in the case of a completed assessment, which was not reopened, the WTO was not entitled to make a reference under Section 16A of the W.T. Act. It has been urged that although the aforesaid case was distinguishable on facts, yet the principle laid down 'therein applies on all fours to the facts of the present case*

*inasmuch as during the pendency of the valuation proceeding the assessment having been completed, the said proceeding has lost its utility. It is not contended that there has been any reopening of the assessment so as to open up a scope for application of the valuation report to such reopened proceeding which would have also been a pending assessment proceeding. Moreover, in terms of the decision in the case of Nawal Kanwar v. WTO, the Rajasthan High Court laid down that the report of the Valuation Officer under [Section 16A](#) could not be used as the basis for reopening an assessment already completed. Though the reference for valuation, in that case, was made in connection with a completed assessment, yet the reason for which such a valuation proceeding was declared void ab initio holds good in a case where during the pendency of the valuation proceeding the assessment is completed, because the whole purpose of a valuation report would be to enable the officer concerned to complete the assessment in conformity therewith. It has not even been stated before me that the reopening or revision of the completed assessment is pending.*

*7. In my view, there is considerable force in the arguments of Dr. Pal and the valuation proceeding is liable to be quashed on the grounds that :*

*(a) the opinion of the ITO which is an essential prerequisite for making a reference for valuation under [Section 55A](#) of the I.T. Act is absent in the present case, and*

*(b) the purpose for which alone a valuation report can be utilised, namely, for completion of the assessment in conformity with the valuation report is no*

*longer existent, the assessment having been completed in the meantime. In such circumstances, to allow the assailed valuation proceeding to continue, would militate against well-known canons of strict construction of taxing statutes.*

*8. The Rule is, therefore, made absolute and the impugned proceedings is quashed by a writ of certiorari. Let a writ of mandamus also issue directing the respondents to forbear from proceeding any further with, or making any valuation under or pursuant to, the impugned reference. There will be, however, no order as to costs.*

17. In terms of aforesaid guiding principle led by the Hon'ble High Courts referred to supra and respectfully following the decision of ITAT Hyderabad in the case of Zulfi Revdjee (supra), in absence of any contrary information or decision by the revenue to counter these observations, we have no hesitation to concur with the contentions raised by the Ld AR that the non-disposal of the objections of the assessee on DVO's report by the Ld PCIT in revisionary proceedings against the principle of natural justice, though set aside to AO for opportunity to assessee, however the report of DVO was prepared, completed and furnished by the DVO to the department beyond the stipulated time provided in section 142A(vi) of the Act, thus the same is against the mandate of law and literal interpretation of provisions of section 142A, therefore the revisionary proceedings initiated u/s 263

based such report are unjustified as well as against the intent of law, thus the same has been rendered as illegal / bad in law, consequently unsustainable.

18. In the result appeal of the assessee M/s Shree Krishna Colonisers in ITA . 95/RPR/2022 stands allowed.

19. Since appeal in the case of M/s Shree Krishna Colonisers in ITA No. 95/RPR/2022 is decided by us in favour of the assessee, having similar facts and circumstances, our decision rendered therein shall equally apply in the case of Shree Krishna Builders in ITA No. 96/RPR/2022. In result the appeal of the assessee is allowed.

20. In combined result both the above appeals of the assesseees are allowed in terms of our aforesaid observations.

Order pronounced in the open court on 14/12/2023.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 14/12/2023

*Vaibhav Shrivastav*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,  
Raipur
6. गार्ड फाईल / Guard file.

**// सत्यापित प्रति True Copy //**

**आदेशानुसार/ BY ORDER,**

**(Assistant Registrar)**

**आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur**