आयकर अपीलीय अधिकरण, दिल्ली पीठें, नई दिल्ली
INCOME TAX APPELLATE TRIBUNAL, DELHI
BENCHES, NEW DELHI

BENCH: E

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

ITA 5816/DEL/2026 (निर्धारण वर्ष/Assessment Year: **2022-23**)		
MANINDER SINGH F-11, JANGPURA EXTENSION, NEW DELHI-110014, DELHI	**Vs.**	**CIRCLE 61(1), DELHI** CIVIC CENTRE,NEW DELHI NEW DELHI-110002, DELHI
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
PAN of Assessee**:**	**AAXPS1587M**	
अपीलार्थी द्वारा/Appellant represented by:	**Sh.Vartik Chuksi,CA & Prabhas Bajaj,Adv. & Rishabh Yadav,Adv.**	
प्रत्यर्थी द्वारा/Respondent represented by:	**Dr.Rajinder Kaur,CIT DR.**	

सुनवाई की तारीख / Date of conclusion of hearing:	**12-Aug-2026**
घोषणा की तारीख / Date of pronouncement:	**12-10-2026**

आदेश / ORDER

PER SHRI MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the revision order passed by the Ld. Principal Commissioner of Income Tax, Delhi-12, u/s. 263 of the Income Tax Act, 1961 (hereinafter referred as Act) for the assessment year 2022-23 vide his order dated 31.3.2026. Assessment was framed by the Assessing Officer of NFeAC u/s. 143(3) read with section 144B of the Act vide order dated 28.3.2024.

2. The first issue is arising out of the Additional Grounds in regard to determination of Annual Letting Value (ALV) of the following properties :

S.No.	Address of the property	Amount (cost) shown (in Rs.)
1.	F.12 Jangpura Extension New Delhi	34,29,010/-
2.	F. 11 Jangpura Extension New Delhi	57,47,220/-
3.	7, Block 171, Sunder Nagar, New Delhi	70,13,85,000/-
4.	E-6, Defence Colony, New Delhi	43,33,51,035/-

3. The Ld. PCIT raised the issue of chargeability of ALV in regard to House No. F.11, Jangpura Extension, New Delhi, House No. 7, Block-171, Sunder Nagar, New Delhi and House No. E-6, Defence Colony, New Delhi.

4. The assessee has raised many facets on this issue i.e. (i) that assumption of jurisdiction u/s. 263 of the Act is without authority of law as the assessment order is neither erroneous nor prejudicial to the interest of revenue; (ii) there is no lack of enquiry or inadequate enquiry or absence of proper enquiry; (iii) PCIT erred in holding that the properties used by assessee for profession are residential properties and therefore, the subject properties could not have been for assessee's profession.

5. The brief facts relating to this case are that the assessee is a Senior Advocate practicing in Supreme Court of India and various High Courts of India and was Former Additional Solicitor General of India, Government of India. For the relevant assessment year, assessee's total net receipt declared during the year from profession were to the tune of Rs. 24,39,14,398/- and total returned income Rs. 27,53,51,900/-. The AO during the original assessment proceedings issued notice u/s. 142(1) of the Act dated 29.2.2024 and required the assessee to furnish the details of all house properties owned by inheritance or acquired or purchased and how House Property income declared against such house property. The relevant question no. 5 reads as under:-

> *5. Further, pl. furnish the list of all the house properties, (owned by inheritance/acquire/ purchase) where you are one co-owner. Pl. furnish your share in that property and also furnish the names (with PAN) of other co-owners with their share in that properties. Also furnish the details of HP income earned against such house property and how much income was shown by you against such properties in filing return of income for the relevant A.Y. If there is any discrepancy in showing HP income, pl. explain the reason behind it.*

6. This was answered by the Assessee vide reply filed on 5.3.2024 wherein, the assessee has submitted the complete details of properties which read as under:-

Sl.No.	Description	Remarks
1.	Plot measuring 202.2 sq. yds. At C-123, Kant Enclave, Faridabad, Haryana	Allotted in the year 1996
2.	(Basement) floor in House at F.12, Jangpura Extension, New Delhi – 110014 land measuring 284 sq. yds.	Acquired in the year 1996
3.	½ share in residential house at G-16, Jangpura Extension, New Delhi 110014 constructed on land admeasuring 200 sq. yds.	Acquired in the year 2001
4.	½ share in residential house at F.11, Jangpura Extension,	Acquired in the year 2003
5.	½ share in residential house at G.17, Jangpura Extension, New Delhi constructed on land admeasuring 200 sq. yds.	Acquired in the year 2008
6.	Residential house at E-6, Defence Colony, New Delhi – 110 024. Constructed on land measuring 913 sq. yds.	Acquired in FY 2021-22
7.	Residential house at 7, Sunder Nagar, New Delhi – 110 003 constructed on land measuring 866.66 sq.yds.	Acquired in FY 2021-22

7. Further, show cause notice was issued vide dated 15.3.2024 wherein, the AO enquired about the rental income earned by the assessee's wife who is co-owner with the assessee and therefore as to why 50% out of the rental income of Rs. 1,11,93,753/- i.e. half of this Rs. 55,86,877/- be not attributed to the assessee as his rental income being co-owner. The assessee replied that this property is exclusively owned by assessee's wife Unit no. 601, 5th floor, Building No. 3, Bangalore. Further, another intimation for hearing through Video Conference was served on assessee vide notice dated 19.3.2024 wherein, again enquiry was made as regard to ownership of two properties namely G-16, Jangpura Extension, New Delhi & G-17, Jangpura Extension, New Delhi wherein, assessee was having 50% co-ownership and assessee was showing notional rent of Rs. 1,00,224/- from G-17 Jangpura Extension and Rs. 85,948/- (G-16 Jangpura). The AO finally framed assessment u/s. 143(3) read with section 144B of the Act vide order dated 28.3.2024 and made valuation in respect of house property income to the extent of Rs. 65,161/-.

8. Subsequently, Ld. PCIT-12, Delhi issued show cause notice u/s. 263 of the Act dated 25.2.2026 on the issue of computation of ALV of the properties mentioned in para no. 6 as aforesaid, and held that no ALV is declared from these properties and hence, the assessment framed by the AO is erroneous in so far as prejudicial to the interest of revenue. The Ld. PCIT in his show cause notice noted that assessee has not shown any ALV to properties located at E-6, Defence Colony, New Delhi; 7, Block 171, Sunder Nagar, New Delhi; and further properties at F.11 and F.12, Jangpura Extension, New Delhi not exclusively used for residential and office premises of the assessee. He brought out some of the instances in A.Y. 2016-17 and AY 2017-18 where assessee has shown rental income from F. 11, Jangpura Extension, New Delhi and certain entities are also functioning from F.12, Jangpura Extension, New Delhi and he noted that one Sh. Karamanya Singh Sareen S/o the assessee is one of the partners in these entities

namely Kommit Infotech LLP; Kommit Techno Legal LLP and Raybot Home Steels Pvt. Ltd. Accordingly, he noted that as per the provisions of law and also as held by Hon'ble Courts that for a property declared as self occupied, any portion not used for own residence of assessee will not have a NIL ALV. Instead, its ALV will be determined based on whether it is actually let out or deemed to be let out, and income tax will be calculated accordingly on that portion. Hence, according to him, F.12, Jangpura Extension and F.11, Jangpura Extension, New Delhi also needs to be verified to assess the ALV as the AO has not made any verification or necessary enquiry to assess the same. Therefore, he was of the prima facie opinion that assessment order passed is erroneous in so far as it is prejudicial to the interest of revenue in terms of Section 263 of the Act, as the order appears to have been passed without making any necessary enquiry or verification which should have been made. The assessee replied to the show cause notice that Property F.12, Jangpura Extension, Delhi; 7, Block 171 Sundar Nagar New Delhi and House No. E-6, Defence Colony, New Delhi all are properties used for the professional purposes of the assessee as offices and the period being covered under Covid by the professional works done by the assessee from these residential houses and even otherwise these properties are being used for assessee's profession from where he has earned a total net receipt from profession of Rs. 24,39,14,398/-. Accordingly, it was claimed by the assessee that once these properties are used for profession, there is no question of declaring ALV in the return of income in regard to these properties. But Ld. PCIT was not agreeable to the contention of the assessee and held that the assessment order is erroneous in so for as it is prejudicial to the interest of revenue by observing as under:-

> *"In the ITR of AY 2022-23, the assessee has shown property mentioned at serial no. 1 above, bearing address of F.12, Jangpura Extension as residential address. Considering the same as self occupied property (SOP), the AO was required to charge the ALV of non-SOP residential properties to tax after excluding properties*

used for professional purposes. Further, as per provisions of law, for a property declared as self-occupied, any portion not used for own residence of assessee will not have a nil Annual Value. Instead, its ALV will be determined based on whether it is actually let out or deemed to be out, and income tax will be calculated accordingly on that portion. Further, during the year under considerable, the assessee had purchased the properties bearing no. E-6, Defence Colony, New Delhi and 7 Block No. 171 Sunder Nagar, New Delhi and the said properties have not been shown as self occupied as the assessee himself described the same as office building and also there is no mention anywhere of using the same as residence. However, as described in para 3.1, AO did not conduct proper inquiries or verification to ascertain whether and to what extent these properties were being used for professional purposes during the year under consideration. Therefore, the issue of chargeability of ALV and determination of such ALV on these properties also arises. The AO was required to charge the ALV of all non-SOP residential properties to tax after ascertaining and excluding the proportionate ALV of properties used for professional purposes. As is clear from the questionnaire issued by the AO during the assessment no verification or inquiry has been made by the AO on these issues also, thereby attracting Explanation 2 to Section 263 rendering the assessment order erroneous in so far as it is prejudicial to the interests of revenue on this count also."

9. Aggrieved, assessee is in appeal before the Tribunal.

10. Before us, Ld. Counsel for the assessee argued that the assessee being a Senior Advocate, practicing in Supreme Court of India and almost in all the High Courts of India and was also Additional Solicitor General of India of Government of India for a long time, wants office spaces for his Juniors, staff and clients. Accordingly, he is using all the above mentioned properties i.e. F.11, Jangpura Extension, F. 16, Janpugra Extension and E-6, Defence Colony, New Delhi 7, Block 171, Sunder Nagar, New Delhi for offices purposes only. These properties are registered in the conveyance deed as residential, but assessee has

been using these properties for legal profession and there is no violation of any provision of law rather legal profession is permitted expressly by way of Planning Regulations made applicable to the National Capital Territory of Delhi particularly clause 15.8 of the Master Plan for Delhi, 2021 which permits Advocates, Chartered Accountants, Doctors, Architects and other specified professionals to carry on professional activities from residential premises subject to the prescribed conditions. Ld. Counsel for the assessee relied upon the decision of the Hon'ble Delhi High Court in the case of South Delhi Municipal Corporation vs. BN Magon LPA 564/2015 dated 23.3.2023. Ld. Counsel for the assessee argued that in view of the complete premise of the Ld. PCIT is wrong and the revision order passed by the PCIT u./s 263 of the Act is based on assumptions, presumptions, conjectures and surmises. The clause 15.8 of the Master Plan for Delhi 2021 reads as under:-

> *Clause 15.8 of the Master Plan for Delhi 2021*
>
> *"The Master Plan for Delhi, 2021 permits professional activities to be carried on from residential premises by specified professionals, including Advocates, Chartered Accountants, Doctors, Architects, Engineers, Company Secretaries, Cost Accountants and other notified professionals, subject to the conditions prescribed therein."*

11. Ld. Counsel for the assessee further stated that the subject properties are situated at Defence Colony, Sunder Nagar and Jangpura Extension, New Delhi which are governed by the Master Plan of Delhi 2021. The Planning Regulations themselves expressly recognizes that Advocates may lawfully use residential premises for carrying on professional activities. He argued that the consequences of the same is that Ld. PCIT has wrongly assumed that a residential property is incapable of being used for professional purposes and therefore, under wrong assumption, he held that the assessment order is erroneous and prejudicial to the interest of revenue.

12. Further, he argued that the Ld. PCIT accepted that no ALV has been computed and he has not given any basis for computing the ALV and how the assessment order is erroneous and prejudicial to the interest of revenue. It was submitted that first the Ld. PCIT should have the basis of computation of ALV and what should be the method for the same. Because the AO cannot completely implement the revision order passed by the Ld. PCIT and for that purpose, this issue has become debatable. In terms of above, Ld. Counsel for the assessee stated that for this issue of computation of ALV of the subject properties, the Ld. PCIT has wrongly passed this revision order which is not valid in the eyes of law.

13. On the other hand, Ld. CIT(DR) argued that the assessee has not declared any ALV from the buildings, properties, i.e. three properties which are purely residential properties. She argued that it is mandatory under Section 22 of the Act to reasonably estimate the ALV for the purpose of computation of income for house property under Section 22 of the Act, and in case this is not done by the assessee, AO is duty-bound to assess the ALV, which the AO failed to do so. Hence, she submitted that learned PCIT has rightly invoked the revisionary powers under Section 263 of the Act, directing the AO to reframe the assessment after considering the ALV of these properties. Thus, she supported the order of the learned PCIT.

14. We have heard the rival contentions and gone through the facts and circumstances of the case. Now first of all, the assessee's contention were never rejected by the Ld. PCIT that these properties were used by the assessee for his legal profession, i.e. House No. F-11, Jangpura Extension, New Delhi, House No. 7, Block 171, Sunder Nagar, New Delhi, and House No. E-6, Defence Colony, New Delhi. The assessee is a Senior Advocate practicing in Supreme Court of India and almost in all the High Courts of India, and was a Former Additional Solicitor General of India, Government of India. He has vast experience in the legal profession. Even otherwise, the learned PCIT has not gone into any

assertions made by the assessee whether these properties are not used for the purpose of assessee's legal profession. Rather, it is presumed to be admitted that assessee is carrying on profession from all these properties, as the same is being used by his juniors, staff, and clients. The AO has gone into all these details and assessee filed complete details before the AO, and after going through the complete details, he has not computed the ALV, because the assessee is using these properties for his legal professional work. The another objection raised by the learned PCIT that these are residential premises and cannot be used for professional purposes. The argument made by the assessee's counsel that these properties, although residential, but can be used for the profession in view of the clause 15.8 of the Delhi Master Plan 2021, as reproduced above, which permits the specified profession to carry on professional activities from the residential premises, and these are as per laws. The AO has done all the verifications and enquiries on this issue. Hence, in our view, no ALV can be computed while framing assessment, which AO has rightly done. Hence we find no error in the order of the Assessing officer and there is no prejudice caused to the revenue on this account. Accordingly, we are of the view that the learned PCIT, while revising the assessment under Section 263, has exceeded his jurisdiction and accordingly the same is vitiated and thus, order of the learned PCIT is reversed on this issue.

15. The second issue is arising out of the Additional Grounds is claiming of depreciation on the properties.

16. Briefly stated facts are that assessee case was selected for scrutiny through CASS under Section 143(2) of the Act to verify the investment in tangible assets and claim of depreciation. Ld. PCIT, while issuing show-cause notice under Section 263 of the Act for revising the assessment framed under Section 143(3) vide order dated 28 March 2024, the AO has wrongly allowed the claim of depreciation on properties acquired during the year i.e. E-6, Defence Colony and

7, Block 171, Sunder Nagar, New Delhi. According to Ld. PCIT, the depreciation of a property acquired at E-6, Defence Colony is Rs. 4,64,70,306/- which is valued at Rs. 48,15,01,150/- and depreciation of property at 7, Block 171, Sunder Nagar, New Delhi, amounting to Rs. 3,64,46,180/- property valued at Rs. 73,83,00,000/-. According to Ld. PCIT, the AO failed to examine the claim of depreciation relating to these properties properly, and he pointed out that there is glaring anomaly, which remained to be noticed by the Assessing Officer, that in Tax Audit Report for assessment year 2022-23, there is no mention of claim of depreciation on stated properties acquired/located at E-6, Defence Colony, New Delhi and 7, Block 171, Sunder Nagar, New Delhi. According to Ld. PCIT, the depreciation was straightway claimed only in ITR at Rs. 8,50,65,115/- on these two properties, and it is not routed through the tax audit report. Ld. PCIT noted that both the subject properties are residential properties, and as per the sale deed of Sunder Nagar property, the valuation as per circle rates of land was Rs. 56,08,64,000, and circle rate for construction of Rs. 72,40,102/- and similarly for Defence Colony property, also Ld. PCIT noted that the land for which the circle rate is Rs. 14,99,40,046 and circle rate on construction Rs. 53,82,864/-. According to this Ld. PCIT, the sale deed differentiate the land cost as well as the construction cost for the purpose of computation of valuation as per the circle rate, and according to him, the depreciation can be claimed only on the construction cost and not on the land cost. Therefore, he proposes disallowance with reference to the Sunder Nagar, New Delhi property by noting that out of the total cost of acquisition of Rs. 73.83 crore, the combined land comes to Rs.72,89,23,590/-, and therefore out of the depreciation claimed of Rs. 3,69,15,000/-, the element of depreciation of Rs. 3,64,46,180/- is to be disallowed straightway. Similarly, with reference to the Defence Colony property, the PCIT noticed that the total cost of acquisition of Rs. 48,15,01,150/-, component of land comes to Rs. 46,47,93,060/-, and therefore out of the depreciation claimed of Rs.4,81,50,115/-, the depreciation of Rs. 4,64,70,306/- has to be disallowed

straightway. The PCIT also noted that the decision of Hon'ble Supreme Court in the case of CIT vs. Alps Theatre [1967] 65 ITR 377, wherein, it is held that depreciation is allowable on building if it otherwise qualifies for it, but not on the land on which the building stands. Accordingly, PCIT held that the assessment order framed by the AO is erroneous and prejudicial to the interest of revenue, for the reasons that AO has wrongly allowed the claim of depreciation on land in respect of these two properties i.e. Sunder Nagar property and Defence Colony property.

17. Aggrieved, assessee came in appeal before the Tribunal.

18. Before us, learned counsel for the assessee stated that the AO has carried out necessary inquiry and verification in regard to these claim of depreciation on these two immovable properties for the reasons for selecting the case for scrutiny under CASS was to examine the investment in tangible assets, claim of depreciation. learned counsel for the assessee pointed out that AO vide show-cause notice issued under Section 142(1) dated 29 February 2024, vide question number 1, the AO specifically enquired about the details of fixed assets and depreciation claimed during the year along with supporting documents which read as under:

> 1. The details of additions to fixed assets and depreciation claimed during the year alongwith supporting documents. Pl. furnish copies of bills / vouchers in respect such purchase. Pl furnish the details of payments with source of payments against such purchase with mode of payments and copies of bank extract in support of such payments.

19. The above question was replied by assessee vide letter dated 12 March 2024 as under:-

> From the perusal of the above, it is clear that the purchase of laptop etc. is only of Rs. 31,31,955/- which is miniscule amount for such big practice. In addition, two immovable properties in Defence Colony and Sunder Nagar have been added in the year for which a detailed explanation is given in the subsequent para 6. These

properties have been used exclusively for the office purposes of law practice (i.e. for business purposes).

20. Learned counsel for the assessee argued that the information so specifically sought by the AO in relation to the claim of depreciation made by the assessee, which had been duly provided along with all particulars, documents and information including copy of registration of sale deed of these properties, i.e. Defence Colony and Sunder Nagar property. It means that the AO has made inquiry, and after making necessary inquiry, he has taken one of the plausible views, and accordingly learned counsel for the assessee argued that assessment order cannot be held to be erroneous in so far as prejudicial to the interest of revenue. Learned counsel for the assessee argued that the payment made by the assessee for purchase of these two properties is composite payment for land and building, which can be verified from the sale deed that total consideration paid was Rs. 73.83 crores, being total cost of acquisition of Sunder Nagar property, of Rs. 48,15,01,150, being total cost of acquisition of Defence Colony property. He stated that there is no bifurcation made by the assessee or by the registering authority who registered the sale deed, which can be verified from the sale deed. The Sub-Registrar, while registering these two properties noted in the sale deeds for the purpose of valuing of rates as per the circle rates for charging of stamp duty, the method for computing the value has been devised, and this has nothing to do with the composite sale consideration paid by the assessee. Learned counsel for the assessee for this proposition relied on the decisions of the Coordinate Benches of this Tribunal in the case M/s National Housing Bank vs. DCIT passed in ITA No. 477/Del/2017 (AY 2012-13) vide order dated 10.02.2020 and in the case of ITO vs. Millenium Spire India Management (P) Ltd. passed in ITA No. 3297/Del/2013 (AY 2009-10) vide order dated 23.12.2014. In terms of the above, learned counsel for the assessee argued that the assessment order framed by the AO is neither erroneous nor prejudicial to the interest of revenue in regard to the issue of allowance of depreciation. Furthermore, and alternatively, learned

counsel for the assessee submitted that in any case this is a debatable issue and there is no clarity on the issue whether on facts and circumstances, depreciation is to be allowed, in view of these two properties, with two decisions of this Tribunal. Hence, he urged the Bench to confirm the order of the AO and reverse the order of the Ld. PCIT.

21. On the other hand, learned counsel argued that the sale deed clearly demonstrates land value and construction value differently for the purpose of computation of stamp duty, as per the circle rates, and land never depreciates. For this, he relied upon the decision of this Hon'ble Supreme Court in the case of CIT vs. Alps Theatre (Supra). In terms of above, he argued that the Ld. PCIT has validly directed the AO to compute the depreciation and accordingly re-compute the income of the assessee.

22. We have heard the rival contentions and gone through the facts and circumstances of the case. Admittedly, the assessee's case was selected for scrutiny to verify the investment in tangible assets and claim of depreciation, which is noted by the Assessing Officer in the assessment order in para 1 at page no. 1 in his show-cause notice raised this particular issue, vide questionnaire issued under Section 142(1) dated 29 February 2024, vide question number 1 wherein, the details of addition to fix assets and depreciation was asked for. The assessee replied the same vide letter dated 12 March 2024, giving the details of purchase of movable as well as immovable properties and claim of depreciation. Even the claim of depreciation was available before the AO during original assessment proceedings, in the computation of income where the assessee has claimed depreciation. The AO has made inquiries and verified all the details and only thereafter he allowed the claim of depreciation. The learned PCIT raised this issue while issuing show-cause notice that there is separate quantification value of land and construction area of the above subjected properties, i.e. Defence Colony and Sunder Nagar properties. We have gone through the relevant sale deed, which is a part of assessee's paper book as well as cited by the Assessing

Officer in the assessment order as well as by the learned Ld. PCIT in his show-cause notice as well as in his revisional order passed u/s. 263 of the Act. We noted that the sale consideration noted by the sub-registrar in the sale deed is a composite sale consideration and not separately as land and building. Although the sub-registrar has valued the land separately and building separately for determining the valuation as per the circle rate fixed by the Government of Delhi. But while paying stamp duty, which is more than the circle rates fixed by the Government of Delhi, the sub-registrar has noted the composite value of the land and building and there is no distinction made. The learned PCIT in his revision order could not point out how will value is to be segregated and what will be the basis for disallowance of depreciation. Furthermore, when there is composite value, this issue has already been settled in the case of M/s National Housing Bank vs. DCIT (Supra) and wherein the Tribunal has considered this issue and finally held that once there is no segregation in land and building and paid the composite price of the entire consideration, the depreciation claim is allowable under Section 32 of the Act. The Tribunal observed as under:-

> *"(E) We have heard both sides. We have also perused the materials available on record. It is not in dispute that the issue in dispute in the present appeal is squarely covered in favour of the assessee by aforesaid orders in the case of Joint Commissioner of Income-Tax vs. Rajesh Exports Ltd. (supra) and order dated 28.03.2019 of Coordinate Bench of ITAT, Delhi, (supra). Also, no distinguishing facts and circumstances have been brought to our notice by either side to persuade us to take a view different from the view taken by the ITAT in the aforesaid orders in the case of Joint Commissioner of Income-Tax vs. Rajesh Exports Ltd. (supra) and order dated 28.03.2019 of Co-ordinate Bench of ITAT, Delhi, (supra). For ease of reference, the relevant portion of the aforesaid order dated 28.03.2019 of Co-ordinate Bench of ITAT in assessee's own case is reproduced below:*
>
> > *"25. AO as well as id. CIT (A) has disallowed an amount of Rs.40,44,605/- claimed as depreciation on office building on the ground that the same is attributable towards cost of land.*

26. Ld. AR for the assessee contented that in the absence of any segregation of value of land, depreciation has been claimed on the basis of total cost paid to India Habitat Centre because land is also leasehold being subject to amortization and effectively the total cost paid for the premises will be considered For amount of depreciation. Ld. AR relied upon the decision rendered by the coordinate Bench of the Terminal in CIT vs. Rajesh Exports Ltd. (2006) 9 SOT 28 (Bang.) which has further than relied upon by the co-ordinate Bench of the Tribunal in ease of ITO vs Millennium Spire India Management (P) Ltd. ITA No.3297/Del/2013.

27. Operative part of the aforesaid decisions rendered by the coordinate Bench of the Tribunal in CIT vs. Rajesh Exports Ltd. (supra) is extracted for ready perusal as under:

> *"Under section 32(1) of the Act, the word "building" is to be interpreted as the superstructure and not land. Where the assessee purchases building and the purchase price (as per sale deed) is a composite one (sale deed does not indicate the prices of land and building separately), then no distinction at feast in the consideration paid to the vendor can be made. However, if there is a clear-cut identity in respect of price paid to the land and building (Le., sale deed indicates price of land and building separately), then Assessing Officer is right in allowing depreciation only an the building."*
> *28. In this case also, when the assessee bank does not have any segregation value of land and building of the said premises and it has paid composite price, the entire depreciation claim is allowable under Section 32 of the Act. So, following the aforesaid decision rendered by the Co-ordinate Bench of the Tribunal in CIT vs. Rajesh Exports Ltd. (supra), and when it is categoric case of the assessee that the purchase price of land and building is composite one and it has no segregation of value of land and building separately, disallowance made by the AO/ CIT (A) is not sustainable in the eyes of law. So, Ground No. 5 to 8 of ITA No. 6888/Del/2014 (AY 2011-12) of assessee's appeal is determined in favour of the assessee."*

> *(E.1) Respectfully following the aforesaid order dated 28.03.2019 of Co-ordinate Bench of ITAT in assessee's own case, we also decide the issue in dispute in the present appeal before us, in favour of the assessee and direct the AO to allow the assessee's claim for depreciation amounting to aforesaid Rs. 36,40,145/-."*

23. Furthermore, this issue has also been dealt by the Coordinate Bench of the Delhi Tribunal in the case of ITO vs. Millennium Spire India Management (P) Ltd., (Supra) wherein, Coordinate Bench has considered the similar issue of composite consideration where segregation is not possible, and also discussed the provisions of Section 32 of the Act, and finally held that in the absence of contrary decision in respect of composite consideration, the depreciation was allowed on the entire sale consideration by observing as under:-

> *"10. We have heard the rival submission and perused the records. We have perused the agreement dated 03.01.2006 between M/s. India Colonizers Pvt. Ltd. And Mr. Inder Aravinder Singh, the original allottee, who assigned their respective rights to the appellant at a price. 11. The relevant clauses of the agreement has also been extracted by the ld CIT(A) which are as under:-*
>
> *"Clause 6 of the Agreement (Page 4)*
>
> *"That in consideration of the payment made/to be made by the SPACE BUYER to the DEVELOPERS and in the manner appearing hereinafter, the DEVELOPERS hereby agrees to transfer, convey and assign to the SPACE BUYER and the SPACE BUYER agrees to have and acquire the 'Said Premises' at the rate mentioned against it and upon the terms and conditions set out hereunder as mutually agreed by and between the parties hereto."*
> *Clause 7 of Agreement*
> *That it is made clear that what is to be sold is the space described above. The land underneath is leased out by the DDA and such lessee rights will ultimately be shared by the owners of various spaces including the Buyer herein through the medium of a society or any other appropriate body. Although no interest in the land has been agreed to be transferred as such, nevertheless it is made clear that the Space Buyer shall have no right to claim partition of the land. (Comment - till date no such society or body has been formed and no land has been transferred)*
>
> *Clause 8 of Agreement*
>
> *"The term 'Premises' mean the inside of what is hereby agreed to be sold while the term 'Complex' as used in this agreement refers to the overall complex, various facilities and common areas therein excluding those Premises which have been sold to others. "*
> *Clause 9 of Agreement*
> *"THAT it is mutually agreed that save and except in respect of the 'Said Premises' hereby agreed to be acquired by the SPACE BUYER, he/she/they shall have no claim, right, title or interest of any nature or kind whatsoever except right to ingress/egress over or in respect of land, open spaces and all or any of the common areas such as lobbies, staircase, lifts, corridors, terrace and roof etc. which shall remain the property of the DEVELOPERS, who may use and utilize the same in any manner they like and the SPACE BUYER shall have no claim or objection to the same."*

Clause 13 of agreement Pg 5,

Notwithstanding the fact that a portion of the common area has been included for the purpose of calculating the super area of the 'Said Premises', it is specially made clear that it is only the inside space in the 'Said Premises' that has been agreed to be conveyed and transferred to the SPACE BUYER and the inclusion of the common areas in the computation does not give any interest therein as such to the SPACE BUYER, except as provided hereunder.

Clause 72 of the Agreement Pg17,

"In the event of an additional storey being permitted at any later time, such construction right shall belong to the Developers as distinct from Body/society/agency "

12. From a perusal of the above terms of the agreement, we find that it is a composite agreement; and there is no separate consideration attributable specifically to the land. Therefore the issue is whether on purchase of commercial space for a composite consideration, the assessee is entitled to claim depreciation on the composite consideration. This issue was considered by the Bangalore Bench of ITAT in the case of JCIT Vs. Rajesh Exports 9 SOT 28 (BANG.) ITAT BANGALORE and it was held as under:-

"9 SOT 28 (BANG.) ITAT BANGALORE
"Now the question is if it is a land, then depreciation under section 32 of the Act is allowable. Section 32(1) reads as under:
"32(1) In respect of depreciation of-

(i) buildings, machinery, plant or furniture, being tangible assets;

It is clear from a reading of section 32(1) that the word 'building' is used by the Legislature. The term 'building' used in section 10(2) of the 1922 Act had come up for Judicial examination before the Hon'ble Supreme Court in the case of CIT v Alps Theatre (65ITR377). The question before the Supreme Court was whether the cost of land is entitled to depreciation along with cost of building standing thereon. Reversing the judgment of the Punjab & Haryana High Court; the Hon'ble Supreme Court held that building does not include the site because there cannot be any question of destruction of site. It is further held that the word used is 'depreciation' and depreciation means decrease in value of property through wear & tear deterioration, obsolescence. (Webster's New Word Dictionary). In that sense, land cannot depreciate. Depreciation is allowable only on the value of superstructure on the land and not on the value of land. The legal principles laid down by the Hon'ble Supreme Court in the case of Alps Theatre (supra) still holds good. Even under section 32 of the IT Act, 1961, the word used is 'building' and building is to be interpreted the superstructure. As far as the facts before us are concerned, though it is vehemently argued by the learned counsel for assessee that the purchase price of land was a composite one and for the sake of convenience, the price of land and price of building was separately shown, we are afraid that his contention can be accepted. As far as the Conveyance Deed is concerned, consideration paid by the assessee for land is shown separately. If

the transaction was composite one, then no distinction at least in the consideration paid to the vendor would have been made. We are of the opinion that as there is a clearcut identity in respect of price paid to the land and building, the Assessing Officer was right in allowing depreciation only on the building. The CIT(A) was not justified in directing the Assessing Officer to allow depreciation on the cost of land as the same is not contemplated under section 32 of the Act. In the result, we set aside the order of the CIT(A) on this issue and restore that of the Assessing Officer. In the result, the revenue's appeal is partly allowed."

13. Having considered the above case- laws and in the absence of any other contrary decision in respect of a composite consideration, we are inclined to confirm the impugned order of the ld CIT(A). The ld DR has not assailed the factual position that the consideration paid was not a composite consideration, by pointing out any material so as to persuade us to come to a conclusion that there was bifurcation of consideration between land and building. Therefore we confirm the order and dismiss the appeal."

24. Even now before us, no contrary decision has pointed out, and moreover, the Sub-registrar in the subject properties, i.e. Defence Colony and Sunder Nagar properties, the entire sale consideration is a composite consideration and going by the facts, we are of the view that there is no error in the order of the Assessing Officer and no prejudice has been caused to the revenue. Hence, we affirm the order of the AO and reverse the order of the learned PCIT on this issue passed under Section 263 of the Act. Even otherwise, this issue is highly debatable and once the issue is debatable, the revisional order under Section 263 of the Act is not possible where the debate created by the issue of composite as decided by the Coordinate Bench in the case of M/s National Housing Bank vs. DCIT (Supra) and ITO vs. Millennium Spire India Management (P) Ltd. (Supra). Since this debatable issue is whether revision order can be passed, the Hon'ble Bombay

High Court in the case of CITvs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom.) has observed as under:

> *"We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the Income-tax Officer to re-examine the matter. That, in our opinion, is not permissible. Further inquiry and/or fresh determination can be directed by the Commissioner only after coming to the conclusion that the earlier finding of the Income-tax Officer was erroneous and prejudicial to the interests of the Revenue. Without doing so, he does not get the power to set aside the assessment. In the instant case, the Commissioner did so and it is for that reason that the Tribunal did not approve his action and set aside his order. We do not find any infirmity in the above conclusion of the Tribunal. In the light of the foregoing discussion, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Revenue."*

25. Further, the Hon'ble Supreme Court in the case of CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC) has observed as under:-

> *5. We find no merit in the said contentions. Firstly it is not in dispute when the order of the Commissioner was passed*

> *there were two views on the word "profit" in that section. The problem with Section 80-HHC is that it has amended eleven times. Different views existed on the day when the Commissioner passed the above order.*
>
> *6. Moreover the mechanics of the section have become so complicated over the years that two views were inherently possible. Therefore, subsequent amendment in 2005 even though retrospective will not attract the provision of Section 263 particularly when as stated above we have to take into account the position of law as it stood on the date when the Commissioner passed the order dated 5.3.1997 in purported exercise of his powers under Section 263 of the Income Tax Act, 1961.*

26. Respectfully following the aforesaid precedents, we are of the considered view that assumption of jurisdiction by the PCIT u/s. 263 is not sustainable in the eyes of law, as the assessment order passed u/s. 143(3) is neither erroneous nor prejudicial to the interest of revenue. The assessment records conclusively establish that the very issues sought to be revised formed part of the scrutiny proceedings, detailed enquiries were conducted by the AO, comprehensive explanations and documentary evidences were furnished by the assessee and after due verification and application of mind, the AO accepted the assessee's claim. It is also noted that order passed u/s. 263 does not identify any legal or factual error in the assessment order. However, it merely shows the opinion of the Ld. PCIT for that of the AO on the same material already examined during the assessment proceedings. The findings recorded by the PCIT regarding alleged lack of enquiry, the allocation of purchase consideration between land and building, the use of the subject properties for the assessee's profession and the

invocation of Explanation 2 to Section 263 are contrary to the statutory provisions, and not supported by the assessment records and inconsistent with the settled principles as discussed above. The present case is not one of lack of enquiry but one where detailed enquiry was admittedly conducted during the scrutiny assessment and one of the legally permissible views was consciously adopted by the AO. In view of aforesaid discussions, the assessment order framed by the AO is neither erroneous nor prejudicial to the interest of revenue in regard to the issue of allowance of depreciation, thus the assessment order is upheld and order of the Ld. PCIT is reversed on the issue in dispute.

27. In the result, appeal of the Assessee is allowed.

Order pronounced in the Open Court on 12/10/2026.

Sd/- Sd/-

(KRINWANT SAHAY) (MAHAVIR SINGH)
ACCOUNTANT MEMBER VICE PRESIDENT

SRBhatnagar

Date:12-10-2026

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Bench

SHASHI KANT PANDEY Digitally signed by SHASHI KANT PANDEY Date: 2026.10.23 03:14:01 +0700