

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU (HON'BLE PRESIDENT)
AND
SHRI SAKTIJIT DEY (HON'BLE JUDICIAL MEMBER)

I.T.A. No.511/Mum/2021
(Assessment year 2015-16)

Rupa Samir Mehta 902-903, Rajul Apartments, 9, Harkness Road, Mumbai PAN : AADPM5974G	vs	Pr.Commissioner of Income-tax Range-19, Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Vasant Parikh, AR
Respondent by	Shri S Murli Mohan [CIT, (DR)]

Date of hearing	21-10-2021
Date of pronouncement	18-11-2021

ORDER

Per Bench

In the present appeal assessee has assailed the order dated 26-02-2021 passed by the learned Principal Commissioner of Income Tax (PCIT)-19, Mumbai under section 263 of the Income Tax Act, 1961 for the assessment year 2015-16.

2. The effective grounds raised by the assessee are as under:-

1. On the facts and circumstances of the case and in law, the Principal Commissioner Income-tax - 19, Mumbai ("the Pr.CIT") erred in assuming jurisdiction under section 263 and holding the assessment order, under section 143(3) of the Income-tax Act, 1961 ("hereinafter referred to as "the Act") dated 09.11.2017 (hereinafter referred to as "the assessment order"), as erroneous and prejudicial to the interest of the revenue. The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provisions of law;

2. *The Pr. CIT failed to appreciate that, where two views are possible and the Assessing Officer (hereinafter referred to as "the AO"), after conduct of due enquiry, has taken one view with which the Pr. CIT does not agree, the assessment order cannot be treated as erroneous and prejudicial to the interest of the revenue;*
3. *Without prejudice to the above grounds, the Pr. CIT failed to appreciate that the property was purchased at a consideration above the prevailing stamp duty value at the time of booking as even certified by an independent valuation report and therefore the provisions of section 56(2)(vii)(b)(ii) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") cannot be invoked;*
4. *Assuming without admitting that the present case was a case of inadequate enquiry, the Pr. CIT failed to appreciate that the power of revision envisaged under section 263 of the Act and the Explanation 2 thereto can be exercised only where no enquiry as required under the law is done and that it is not open to invoke the said provisions in cases of inadequate enquiry;"*

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, assessee filed her return of income on 28-08-2015 declaring total income of Rs.20,28,950/-. Assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 09-11-2017 accepting the returned income. When the matter stood thus, learned PCIT called for and examined the assessment records of the assessee and after so examining, noticed that the assessee had purchased a flat for a declared consideration of Rs.5.02 crores through a registered agreement dated 27-01-2015. However, for stamp duty purpose, the stamp duty authority has valued the property at Rs.6.09 crores. Whereas, while completing the assessment the assessing officer made no addition of the differential value as required under section 56(2)(vii)(b)(ii) of the Act. He further observed, the stamp duty value for the year under consideration was Rs.2,70,300 per sq.mtr as on the date of registration. Applying the said rate, the value of the property would be Rs.5.80 crores. Whereas, the assessee had paid an amount of Rs.5.02 crores. Thus, he observed, failure to adopt the appropriate market value / stamp duty value of the property has resulted in under assessment of income to the tune of Rs.77,76,649/-. Being of the view that

the assessing officer has accepted the returned income without examining this aspect and without making any enquiry, learned PCIT formed a prima facie view that the assessment framed is erroneous and prejudicial to the interest of the revenue. Accordingly, he issued a show cause notice under section 263 of the Act to the assessee requiring her to explain why the assessment order should not be revised. In response to the show cause notice, assessee furnished her reply objecting to the initiation of proceedings under section 263 of the Act. However, learned PCIT did not find merit in any of the submissions of the assessee and ultimately held that the assessment order is erroneous and prejudicial to the interest of the revenue, as, the assessing officer has failed to add the difference between the declared sale consideration and stamp duty value under section 56(2)(vii)(b)(ii). Accordingly, he set aside the assessment order with a direction to the assessing officer to frame the assessment afresh keeping in view the observations made in the show cause notice issued under section 263 of the Act and the order passed pursuant thereto, after providing due opportunity of being heard to the assessee.

4. Learned counsel for the assessee submitted, assessee's case was selected for limited scrutiny to examine the issue of purchase of the property. In this context, he drew our attention to the notice issued under section 143(2) of the Act, a copy of which is placed at page 1 of the paper book. He submitted, in response to the notice issued, assessee furnished a reply with all supporting evidences. He submitted, in her reply, the assessee had clearly stated that Flat No.B-5102 in Trump Tower, Worli was booked in financial year 2013-14 for a consideration of Rs.5,02,31,276/- at the prevailing market rate, whereas, the agreement was registered on 27-01-2015 when the prevailing ready reckoner value

had increased to Rs.6,09,15,500/-. Further, he submitted, assessee is merely a co-owner of the property and all contributions towards the purchase value of the property were made by the first owner, Shri Shantilal Mehta. In this context, he drew our attention to the copy of sale agreement at page 22 of the paper book and the ledger account copy showing payment made by Shri Shantilal Mehta. He submitted, if at all any addition has to be made, it has to be at the hands of the first co-owner, who has contributed for purchase of the property. In support of such contention, he relied upon the decision of the co-ordinate bench in case of Smt. Nitisha Agrawal vs ITO in ITA No.2481/RPR/2019 dated 12-08-2021. Further, he submitted, in course of assessment proceedings the assessing officer has specifically enquired into purchase of flat and after examining relevant facts and proper application of mind, he has passed the order. Therefore, it cannot be considered as erroneous and prejudicial to the interest of revenue. Further, he submitted, learned PCIT himself has not adopted the value determined by the stamp duty authority and has substituted stamp duty value with his own value, which has no basis at all. He submitted, while determining such value, the PCIT has considered incorrect zone and survey number. He submitted, in course of revisionary proceedings, the assessee has furnished a valuation report by a government approved valuer determining the value of the property at Rs.3,97,90,000/-, which is much less than the declared sale consideration. Thus, he submitted, in the given facts and circumstances the assessment order passed cannot be considered to be erroneous and prejudicial to the interest of revenue.

5. The learned departmental representative strongly relied upon the order passed under section 263 of the Act.

6. We have considered rival submissions and perused materials on record. We have also applied our mind to the decision relied upon. Undisputedly, assessee's case was selected for limited scrutiny. A perusal of notice dated 28-07-2016 issued under section 143(2) of the Act, a copy of which is at page 1 of the paper book, reveals that the scope of scrutiny was to examine the purchase of property. In response to notice issued under section 143(2) of the Act, the assessee filed its reply on 24-04-2017 furnishing the details of flat No.1004 purchased at Anchor Daewoo, Malabar Hill for a declared consideration of Rs.135 lakhs. The assessee filed a further reply on 25-09-2017 furnishing the details of another property purchased being flat No.B-5102, Trump Tower, Worli. As per assessee's own admission in the said letter, the flat was purchased for a declared sale consideration of Rs.5,02,31,276/-, whereas, on the date of registration of the property on 27-01-2015 stamp duty authority determined the value of the property for stamp duty purpose at Rs.6,09,15,500/-. It is further relevant to observe, the assessee herself has stated that the fact of purchase of flat No.B-5102, Trump Tower, Worli was brought to the notice of the assessing officer through AIR statement.

7. Thus, prima facie, there was a difference between the value of the property as per the sale consideration declared by the assessee and as determined by the stamp duty authority. However, a perusal of the impugned assessment order as well as other materials on record do not reveal even a semblance of enquiry being made by the assessing officer regarding the applicability of section under section 56(2)(vii)(b)(ii) of the Act insofar as flat No.B-5102, Trump Tower, Worli is concerned. When assessee's case was selected for limited scrutiny to verify the purchase of property, the very fact that there was a difference between declared

sale consideration and the stamp duty value, should have triggered enquiry regarding applicability of section 56(2)(vii)(b)(ii) of the Act. More so, on the face of AIR information available with the assessing officer. However, neither the assessment order nor any other material available on record even remotely establish that any enquiry was made by the assessing officer regarding applicability of section 56(ii)(vii)(b)(ii) of the Act to the subject transaction. Therefore, non examination of applicability of section 56(2)(vii)(b)(ii) has certainly made the assessment order erroneous and prejudicial to the interest of revenue. Therefore, to that extent, learned PCIT was justified in exercising his jurisdiction under section 263 of the Act to revise the assessment order.

8. Having held so, we must observe, learned PCIT has exceeded his jurisdiction in making various other observations touching upon the merits of the issue. Firstly, learned PCIT was totally wrong in substituting his own valuation of the property in place of stamp duty value. In fact, the value adopted by learned PCIT is not backed by any evidence. Secondly, while adopting his own value learned PCIT has completely ignored the Government approved valuer's report furnished by the assessee. Thirdly, he has not considered various submissions of the assessee regarding non-applicability of section 56(2)(vii)(b)(ii) of the Act.

9. In our view, once learned PCIT held that the assessing officer has failed to enquire into the applicability of section 56(2)(vii)(b)(ii), he should have left the issue at that and no further. Whether section 56(2)(vii)(b)(ii) would be applicable to the transaction or not should have been left to the result of enquiry to be conducted by the assessing officer and his decision after proper application of mind. However learned PCIT himself has assumed the role of, both, the assessing officer as well as DVO. This, in our view, is impermissible. Applicability of section

56(2)(vii)(b)(ii) has to be considered by reading the provision as a whole and in the context of various exceptions provided in the provisos to the said provision. This can be done through a proper and complete enquiry being done by the assessing officer. The assessing officer cannot act independently if he is circumscribed by various observations of learned PCIT on merits.

10. In view of the aforesaid, we modify the order of Learned PCIT by directing the assessing officer to examine the applicability of section 56(2)(vii)(b)(ii) to the subject transaction relating to purchase of Flat No.B-5102, Trump Tower, Worli without being influenced by any of the observations of learned PCIT on merits. While doing so, he must allow fair and reasonable opportunity to the assessee to establish its case on merits and must decide the issue dealing with all the submissions of the assessee and in the light of relevant case laws to be cited by the assessee.

11. In the result, appeal is partly allowed for statistical purpose.

Order pronounced on 18/11/2021.

Sd/-

Sd/-

(G.S. PANNU)	(SAKTIJIT DEY)
PRESIDENT	JUDICIAL MEMBER

Mumbai, Dt : 18/11/2021

Pavanan

Copy to :

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

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai