**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.843/M/2021
Assessment Year : 2015-16**

Ms. Indu Kamlesh Jain, C/601, Vikas Park,Link Road Mith Chowki, Malad West, Mumbai – 400 064 **PAN No.AAJPJ2229F**	Principal Commissioner of Income-tax – 2, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)	**(Respondent)**

Present for:

Assessee by : Shri Neelkanth Khandelwal, A.R.

Revenue by : Shri Nikhil Chaudhary, D.R.

Date of Hearing : 11.11.2021
Date of Pronouncement : 22.11.2021

O R D E R

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 31.03.2021 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2015-16.

2. The only issue raised in the various grounds of appeal is against the exercise of revisionary jurisdiction by PCIT u/s 263 of the Act on the ground that the assessment framed u/s 143(3) of the Act is erroneous and prejudicial to the interest of the revenue as the AO has not examined the issue of sale of flat at a price lower than stamp value.

3. The facts in brief are that the assessment was framed u/s 143(3) of the Act vide order dated 29.12.2017 at Rs.33,12,570 after making an addition of Rs.22,12,000/- by disallowing long term capital gain. The ld PCIT on examination of assessment folder came to the conclusion that the assesse has purchased a flat for Rs.67,50,000/- as per registered agreement dated 10.12.2014 whereas the stamp value of the flat as on that was 1,39,38,500/. According to ld PCIT, since the agreement value is less than the stamp value and therefore difference between the two should have been added to the total income of the assesse u/s 56(2)(vii)(b) of the Act. Accordingly the ld PCIT issued show cause notice u/s 263 of the Act dated 17.03.2021.The ld PCIT after considering the submissions of the assesse passed revisionary order u/s 263 of the Act by setting aside the assessment framed by the AO and directed the AO to examine the issue again.

4. The ld AR vehemently submitted before us that the ld PCIT has not correctly appreciated the facts of the case as the flat no. A/802 Metropolis, J.P. Road Andheri (West) was purchased 25.02.2010 for a total consideration of Rs.67,50,000/- as per allotment letter dated

25.02.2010 and not on 10.12.2014 as observed by the ld PCIT . Even the entire consideration of Rs. 67,50,000/- was paid by 30.06.2010 as per details below:

24.02.2010	038408 dt23.02.2010	1,00,000
01.04.2010	038417 dt01.04.2010	25,00,000
03.05.2010	038420 dt 30.04.2010	25,00,000
30.06.2010	038432 dt 30.06.2010	16,50,000
Total		67,50,000

The ld AR submitted that the said allotment letter was furnished before the AO along with final registered agreement dated 10.12.2014 and AO after duly verification and examination of the issue, accepted the contentions of the assesse. The ld AR submitted that the AO has taken the correct and legal view of the matter whereas the ld. PCIT has grossly erred in not correctly understanding the issue. The ld AR relied on the decision of the coordinate bench in the case of Naina Saraf Vs Pr CIT ITA No. 271/JP/2020 AY 2015-16 wherein a similar issue has been decided in favour of assessee. The ld AR therefore prayed that the revisionary jurisdiction being invalidly and improperly exercised and may kindly be quashed.

5. The ld DR on the other hand relied on the order of ld. PCIT by submitting that on the date of registered agreement, the stamp value of the flat was Rs. 1,39,38,500/- whereas the assesse has bought the said flat for a consideration of Rs. 67,50,000/- and therefore the difference needs to be added to the income of the assesse u/s 56(2)(vii)(b) of the Act and therefore ld PCIT was rightly revised the

assessment. The ld DR submitted that in views of these facts the appeal of the assesse may kindly be dismissed.

6. We have heard the rival contentions and perused the material on records. The only issue on which the jurisdiction u/s 263 was invoked was that the assesse purchased a flat vide registration deed dated 10.02.2014 for Rs.67,50,000/- whereas the stamp value of the same was Rs.1,39,38,500/-. We note that the assesse was allotted flat vide allotment letter dated 25.02.2010 and assesse has paid entire consideration of Rs.67,50,000/- by 30.06.2010. The flat was registered on 10.12.2014. In our opinion the date of purchase is the date when the allotment letter was issued to the assessee and not the date of registered agreement. The case of the assessee is squarely covered by the decision of the coordinate bench in the case of Naina Saraf Vs Pr CIT ITA No. 271/JP/2020 AY 2015-16 (Supra) the operative part whereof is extracted as under:

> "6. We have heard the ld. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the impugned order, we noticed that the case of the ld. Pr. CIT is that the AO failed to invoke the provisions of S. 56(2)(vii)(b) of the Act during assessment and hence non-invoking the provision of S. 56(2)(vii)(b) rendered the assessment order erroneous in so far as it is prejudicial to the interest of the revenue. He noted that there was no agreement for sale as such and the sale/ conveyance deed was entered into on 09.12.2014 and therefore the provisions of S. 56(2)(vii)(b)(ii) were clearly applicable. He also denied the benefit of the proviso to said section inasmuch as because the date of the sale deed and the date of registration are the same. The judgement cited by the assessee in the case of **Sanjay Kumar Gupta Vs ACIT in ITA No. 227/JP/2018 order dated 05/10/2018** passed by the Coordinate Bench of this Tribunal was also held distinguishable. Though he sent the matter back to the assessing officer to complete the assessment afresh after giving the opportunity to the

assessee, however, we are of the view that the ld. CIT having finally adjudicated the matter and having taken a decision that the provision of S. 56(2)(vii)(b)(ii) on the facts of the present case, there was hardly anything left for the AO to provide opportunity to the assessee. This has been specifically challenged by the assessee vide its ground of appeal no. 3 and the very applicability of S. 56(2)(vii)(b)(ii) has been assailed and the denial of the benefit of the first proviso to the said section has also been challenged.

7. The undisputed facts are that the assessee applied for allotment of a Flat No. 201 at Somdatt`s Landmark, Jaipur having 50% share therein on 23.09.2006, pursuant to which, the flat was allotted vide allotment letter dated 06.03.2009 on certain terms and conditions as mentioned in the allotment letter, copy of which has been placed at Pg. 8-14 of the assessee's paper book. The assessee agreed to the allotment by signing the letter of allotment on 11.11.2009 as is apparent from the allotment letter signed by the assessee as a token of acceptance. It is also undisputed that prior to the registration of the transaction on 09.12.2014, the assessee had paid Rs. 45,26,233/- against the total agreed sale consideration of Rs. 65,57,500/-. A perusal of the allotment letter clearly shows that it contains all the substantive terms and conditions which create the respective rights and obligations of the parties i.e. the buyer (assessee) and the seller (the builder) and bind the respective parties. The allotment letter provided detailed specification of the property, its identification and terms of the payment, providing possession of the subjected property in the stipulated period and many more. Evidently the seller (builder) has agreed to sale and the allottee buyer (assessee) has agreed to purchase the flat for an agreed price mentioned in the allotment letter. What is important is to gather the intention of the parties and not to go by the nomenclature. Thus, there being offer and acceptance by the competent parties for a lawful purpose with their free consent, we find that all the attributes of a lawful agreement are available as per provisions of the Indian Contract Act, 1872. We also find that such agreement was acted upon by the parties and pursuant to the allotment letter, the assessee paid a substantial amount of consideration of Rs. 45,26,233/-, as early as in the year 2008 itself. We do not find merit in the contention of the ld. CIT that it was a mere provisional attachment which was subject to further changes because of the unexpected happening which may be instructed by the approving authority, resulting into increase or decrease in the area and so on because it is a standard practice so as to save the seller (builder) from the unintended consequences. However, for all intent and practical purposes such an allotment letter constituted a complete agreement between the parties. We find that the judgement cited by the ld. AR in the cases of Shikha Birla Vs. Ambience Developers Pvt. Ltd., MANU/DE/2524/2008 and Dilip M. Muni and Ors. Vs. Monarch & Qureshi Builders, MANU/NULL/0062/2019, support the contention of the AR though based on S. 54. We

draw strength from the decision in the case of Hansmukh N. Gala vs. ITO (2015) 173 TTJ 537, wherein it was held as under:

> "Capital gains—Exemption under s. 54—Purchase of new house vis-a-vis booking advance to builder—Assesse paid Rs. 1 crore as booking advance to a builder for purchase of new residential house after selling his old residential property—Though the legal title in the said property has not passed to the assesse within the specified period and the new property was still under construction, the allotment letter issued by the builder mentions the flat number and specific details of the property— There is no evidence that the advance has been returned—Therefore, assesse can be said to have complied with the requirement of s. 54 and there is no reason to deny the claim of exemption under s. 54—CIT vs. Kuldeep Singh (2014) 270 CTR (Del) 561 : (2014) 108 DTR (Del) 161 and Khemchand Fagwani vs. ITO (ITA No. 7876/Mum/2010, dt. 10th Sept., 2014) followed."

We also draw strength from the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kuldeep Singh (2014) 270 CTR 561 (Del), wherein the Hon'ble Delhi High Court held that:

> "Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residential house (Purchase) - Whether where assessee having sold residential property, entered into an agreement with a builder within prescribed period of two years for purchase of flat payment of which was linked to stage of construction, assessee's claim for deduction under section 54 was to be allowed - Held, yes [In favour of assessee]"

In the lights of the above decision and on the appreciation of the facts and the evidences available on material, we are convinced that the parties had already entered into an agreement by way of the allotment letter in on 11.11.2009 falling in A.Y. 2010-11.

8. Now we come to the provisions of S. 56(2)(vii), which stood prior to the amendment.

> "((b) any immovable property,—
>
> (i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property; The Finance Act, 2013 inserted clause
>
> "(ii) in S. 56(2)(vii)(b) reading as under: "(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration"

The pre amended law evidently did not cover a situation where an immovable property was received by an individual or HUF for a consideration, whether adequate or inadequate, whether consideration was less than the stamp duty valuation by an amount exceeding Rs. 50,000/-. In other words, the pre amended law which was applicable up to A.Y. 2013-14 never contemplated such a situation and it was only in the amended law, specifically made applicable for and from A.Y. 2014 15 that any receipt of the immoveable property with inadequate consideration has been subjected to the provisions of S. 56(2)(vii)(b) but not before that. Hence, the applicability of the said provision in such cases, could not be insisted in the assessment years prior to a A.Y. 2014- 15. Having said this, in this case, there was a valid and lawful agreement entered by the parties long back in A.Y. 2010-11 only, when the subject property was transferred and substantial obligations were discharged. The law contained in S. 56(2)(vii)(b) as stood at that point of time, did not contemplate a situation of a receipt of property by the buyer with for inadequate construction. Hence, we are of the considered view that the ld. Pr.CIT erred in applying the said provision. Because of the mere fact that the flat was registered in the year 2014 falling in A.Y. 2015-16 on the fulfillment of the conditions, the amended provision of S. 56(2)(vii)(b)(ii) could not be applied. Our view finds support from the decision in the case of Bajranglal Naredi vs. ITO (2020) 203 TTJ 925 (Ranchi) (DPB 1-4) wherein it was held that:

> "Income from other sources—Chargeability—Applicability of s. 56(2)(vii)(b) vis-a-vis date of registration of property—Assessee got registered an immovable property on 17th June, 2013 against the actual purchase of property on 15th April, 2011—Purchase consideration was determined at Rs. 9,10,000 at the time of agreement for purchase—At the time of registration the stamp duty valuation stood at a higher figure at Rs. 22,60,000—Provision of s. 56(2)(vii)(b) was substituted by Finance Act, 2013 and made applicable to asst. yr. 2014-15 onwards—As per the amended provisions, the scope of substituted provision was expanded to cover purchase of immovable property for inadequate consideration as well—Mere registration at later date would not cover a transaction already executed in the earlier years and substantial obligations have already been discharged—Hence, the AO is directed to delete the additions made under s. 56(2)(vii)(b)."

Hence, we are not in agreement with the view taken by the ld. Pr.CIT holding the applicability of S. 56(2)(vii)(b)(ii) in the facts and circumstances of the case and therefore we hold that the assessment order, subjected to revision u/s 263, is not erroneous and prejudicial to the interest of the revenue. Therefore, considering the totality of facts and

circumstances of the case, the impugned order passed u/s 263 of the Act by the ld. Pr.CIT, is therefore, quashed.

9. Once, we quash the order passed U/s 263 of the Act, then in that eventuality, the other grounds raised by the assessee become infructuous and needs no adjudication.

10. In the result, this appeal of the assessee is allowed."

Under these facts and circumstances we are of the considered view that the revisionary jurisdiction has not been validly exercised. Hence we quash the order passed u/s 263 of the Act by ld. PCIT and restore the order of AO. The appeal of the assessee is allowed.

7. In the result the appeal of the assesse is allowed.

Order pronounced in the open court on 22.11.2021.

Sd/-	**Sd/-**
(Amarjit Singh)	**(Rajesh Kumar)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated: 22.11.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.