

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 139/JPR/2024  
निर्धारण वर्ष/Assessment Year : 2018-19

Arvind Kumar Agarwal H. No. 193 Sector-17A, Gurgaon, Haryana	बनाम Vs.	Principal Commissioner of Income Tax, Income Tax Department
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAMPA 7525 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri Nikhilesh Kataria, CA  
राजस्व की ओर से/ Revenue by : Shri Ajay Malik, CIT

सुनवाई की तारीख/ Date of Hearing : 22/08/2024  
उदघोषणा की तारीख/Date of Pronouncement: 29/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of Pr. Commissioner of Income Tax, Jaipur-01 [Here in after referred as (PCIT)] for the assessment year 2018-19 dated 12.12.2023. The Id. PCIT passed that the order under challenges in this appeal as per provisions of section 263 of the I.T. Act (hereinafter to be referred as 'the Act') while examining the assessment record of the above named assessee which was

passed by AO dated 13.04.2021 as per provisions of section 143(3) r.w.s 143(3A) & 143(3B) of the Income Tax Act.

2. The assessee has taken following grounds in this appeal;

*“1. The order passed u/s 263 is bad in law as well as on the facts of the present case and hence the same may please be quashed.*

*2. The Id. PCIT erred in law as well as on the facts of the present case in initiating revisionary proceedings and therefore the consequent order is also bad in law and prayed to be quashed.*

*3. The Id. PCIT erred in law as well as on the facts of the present case in misinterpreting the provisions of sec 56(2)(x) of the Act though the same has no application in peculiar circumstances of the case. Accordingly Id. PCIT erred in setting aside the order of the Id. AO.*

*4. The Id. PCIT erred in law as well as on the facts of the present case in holding the order of the Id. AO as erroneous in so far as prejudicial to the interest of revenue and consequently the order passed u/s 263 is bad in law.*

*5. The assessee prays your goodself indulgence to add, amend, modify or delete all or any ground of appeal on or before the date of hearing.”*

3. The fact as culled out from the records is that the assessee e-filed return of income on 03.07.2018 declaring returned income of Rs. 8,17,300/-. Consequent to that the case of the assessee selected in compulsory scrutiny notice u/s 142(1) was issued online. The reply of the assessee received in response to proceeding initiated under relevant statutory notices of the Act, and

was examined vis-à-vis the scrutiny parameter for which the case was selected under CASS. The Id. AO completed the assessment with no adjustment to the returned income of the assessee.

4. On culmination of the assessment proceedings, the Id. PCIT called for examination the assessment records. Upon, examination the assessment record Id. PCIT noted that in this case, the Id. AO has not applied proper provisions of the Act on the income declared and offered in the return of income so filed. Therefore, Id. PCIT noted that the order is erroneous and prejudicial to the interest of revenue and the action was initiated by invoking the provision of section 263 of the Act by issuing a show cause notice as per provisions of 263 of the Act against which the assessee filed a detailed reply dated 17.03.2023. The Id. PCIT considered all the facts and circumstances as detailed in the reply filed by the assessee but not found the convincing and Id. PCIT thus held as under:-

“15. As discussed above, the Assessing Officer failed to apply his mind on the material available on record and failed to invoke the applicable provisions of law. This in turn has resulted in passing of an erroneous order by the AO in the case due to non-application of mind to relevant material, an incorrect assumption of facts and an incorrect application of mind to the law which is prejudicial to the interest of the revenue and hence liable for revision under section 263 of the Income Tax Act. The

Hon'ble Supreme Court in the case of Malabar Industrial Limited V/s CIT 243 ITR it has held as under-

*"....An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind."*

16. Considering all the facts and circumstances of the case and for the reasons discussed above, the assessment order dated 13.04.2021 for A.Y. 2018-19 passed by the AO is held erroneous in so far as it is prejudicial to the interests of the revenue for the purpose of section 263 of the Act. The said order has been passed by the AO in a routine and casual manner without verification of the issues discussed in above paras. The order of the AO is, therefore, liable to revision under the explanation (2) clause (a) & clause (a) of section 263 of the Act. The assessment order is set aside to be made afresh in the light of the observations made in this order. The AO is required to make necessary verification and examine in depth the issues discussed above in accordance with the prevailing law to determine the correct income of the assessee liable to tax for the A.Y.2018-19 after affording reasonable opportunity to the assessee."

5. Feeling aggrieved from the above order of the PCIT passed u/s. 263 of the Act, the present appeal is filed by the assessee challenging the finding recorded thereon. Apropos to the ground so raised the Id. AR appearing on behalf of the assessee has placed their written submission which is reproduced herein below;

"Brief Facts: The assessee filed its return of income declaring total income of Rs.817300/- for AY 2018-19. The assessment was selected for scrutiny under CASS and in the assessment proceedings the assessee stated that during the year it has purchased a property at Rs.6700000/- for which the agreement of which was entered on 10-4-2015 while the first payment stood made on 5-6-2014 through cheque no.207163. It has also stated that though the stamp duty value is higher in the year of purchases i.e. AY 2018-19 however the transaction of purchases of property is covered by the proviso of section 56(2)(vii) which states that stamp duty of the date of agreement may be adopted where the part consideration has been paid otherwise than the cash.

The assessment was completed under e-proceeding while accepting the income declared by the assessee accepting the explanation offered by the assessee.

Later the Id. CIT again perused the assessment records and pointed out the same issue once again. It stated that the stamp duty value in the year of purchases (AY 2018-19) is at Rs.8558500/- while the purchases is made at Rs.6700000/- and hence Rs.1858500/- is taxable u/s 56(2)(x) of the Act.

The assessee explained the transaction through detailed submission (PB 1-2) however while making certain allegations it held that immovable property has been purchased by the assessee at a consideration which is less than the stamp duty value and as such the difference is taxable u/s 56(2)(x) of the Act. Accordingly the order passed by the Id. AO (NFAC) was held to be erroneous in so far as prejudicial to the interest of revenue and invoking the powers of sec.263 of the Act, the assessment was set aside to the AO to reassess the income.

Now the assessee has filed this appeal.

Our Submission:

1. Order of Id. Pr.CIT out of jurisdiction: At the outset, we may submit that the address of the assessee as per assessment order is H.No.193 Sector-17A, Gurgaon-122001, Haryana which is the same address with which the return of income was filed. It is also submitted that the assessee is a salaried person and further no business activity was carried on by the assessee in Rajasthan. As per scheme of Sec.144B (PB 108-112), after completion of assessment the records will be transferred to the jurisdictional AO (See PB 112). Obviously in the present case, Pr.CIT of Jaipur could not have any jurisdiction over the assessee of Gurgaon because jurisdictional AO could not be of Jaipur so as to give him power of revision.

Therefore order passed by the Id. Pr. CIT is bad in law and prayed to be quashed.

Without prejudice to above:

1.1 Assessment neither erroneous nor prejudicial to the interest of the revenue: At the outset it is submitted that the impugned transaction is duly covered by the first proviso of section 56(2)(x) and as such it is not prejudicial to the interest of the revenue and further the Id. AO accepted the explanation of the assessee on the same issue and completed the assessment at nil income after considering the complete facts and circumstances of the case and as such it is not erroneous.

Both the issues have been discussed in detail in coming paragraphs.

1.2.1 Complete facts on record – order of Id. AO not erroneous: We may submit that the complete facts and circumstances were taken in to consideration by the Id. AO before accepting the income returned by the assessee. The agreement dt.10-4-2015, copies of cheques, ready reckoner rate for the relevant period, bank statements etc. were taken on record for coming to the conclusion that there was no income taxable under the provisions of section 56(2)(x) of the Act.

Reference may be made to detailed response of the assessee on the same issue which is placed at PB 3-5. Therefore, it is clear that the Id. AO has taken due consideration of documents and information on record and he has taken one of the view permissible in the eyes of the law which cannot be deemed to be erroneous.

1.2.2 AO's order not erroneous where it has taken one of the permissible view: On this issue, reliance is placed on the decision of Pr.CIT vs. Naina Saraf in DBIT reference no.16/2022 dt.9-5-2022 (Raj)(HC) (PB 75-80).

1.3 No loss caused to revenue-assessment not prejudicial to the interest of the revenue: We may submit that the assessment was not prejudicial to the interest of the reveue which would be clear from the discussion made herein below.

1.4.1 Section 56(2)(x) has no application in the present case: It is submitted that on the basis of agreement the property was purchased in the year 2015 i.e. before 1-4-2017 and the copy of agreement has already been enclosed. It may further be noted that provisions of section 56(2)(x) under which the transaction is sought to be taxed came into existence w.e.f. 1-4-2017. For a detailed understanding, a reference may be made to the following decisions:

Benudhar Gokulanand Biswal vs National E-Assessment Centre in ITA no.202/Mum/2023 dt.29-5-2023 (PB 81-89)

*7. We find that the assessee has purchased the flat vide agreement dated 13.07.2009 and the section 56(2)(x) of the Act was not in the statute book, and also it is well settled principle of Law that a charging section cannot be pressed into service retrospectively unless it is specifically provided for by the legislature. The provisions of Sec. 56(2)(x) of the Act are incorporated in the Finance Act 2017 with the prospective applicability from A.Y.2017-18 and the transactions entered into prior to 1.04.2017 would not suffer any implications of the section. Whereas in the present case, the transaction of purchase of flat is vide agreement dated 13.07.2009 and it was registered on 14-7-2017 in the F.Y.2018-19. Further, merely because the first payment of Rs.2 lakhs was made on 8-10-2009 subsequently after date of agreement, the revenue cannot rely on the second proviso to section 56(2)(x) of the Act and tax the difference in stamp duty value of flat as per SRO and purchase consideration as per agreement. Since the*

*section 56(2)(x) of the Act is not applicable to the assessee, as the agreement was entered prior to 1-04-2017, hence the second proviso cannot be made applicable and the assessee cannot be fastened the liability in the light of second proviso to section 56(2)(x) of the Act. We considering the facts, circumstances, submissions, ratio of the judicial decisions set-aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.*

Reference also may be made to the decision of Hon'ble Jaipur Bench in case of Naina Saraf vs. PCIT in ITA no.271/JP/2020 dt.14-9-2021 which was confirmed by the Hon'ble Rajasthan High Court in the case of Pr.CIT vs. Naina Saraf in DBIT reference no.16/2022 dt.9-5-2022 (Raj)(HC) (PB 75-80)

On consideration of the above, it is noted that, the view taken by the learned ITAT is based on logical findings. While rendering the judgment, the learned ITAT has relied upon various judgments of different High Courts and considered the provisions of 56(2)(vii) pre-amendment and post-amendment. Learned ITAT has held that law contained in Section 56(2)(vii)(b) as stood on the date of allotment letter (on 11.11.2009), falling in assessment year 2010-11, did not contemplate the situation of a receipt of property by the buyer with inadequate construction. The learned ITAT has held categorically that the amended provisions of Section 56(2)(vii)(b)(ii) could not be applied and they have relied upon the judgment of Bajranghlal Naredi Vs. ITO reported in (2020) 203 TTJ 925 (Ranchi) (DPB 1-4). It is held time and again by the Apex Court qua the admission of appeal on substantial questions of law, more specifically in the case of Commissioner of Customs-I Vs. Aasu Exim Pvt. Ltd.:(2018) 16 SCC 591 and Steel Authority of India Ltd. Vs. Designated Authority, Directorate General of Anit Dumping & Allied Duties and Ors.:2017 (349) E.L.T 193 (SC), wherein it is held as under:-

“(i) The question raised or arising must have a direct and/or proximate nexus to the question of determination of the applicable rate of duty or to the determination of the value of the goods for the purposes of assessment of duty. This is a sine qua non for the admission of the appeal before this Court under Section 130E(b) of the Act. (ii) The question raised must involve a substantial question of law which has not been answered or, on which, there is a conflict of decisions necessitating a resolution. (iii) If the Tribunal, on consideration of the material and relevant facts, had arrived at a conclusion which is a possible conclusion, the same must be allowed to rest even if this Court is inclined to take another view of the matter. (iv) The Tribunal had acted in gross violation of the procedure or principles of natural justice occasioning a failure of justice.”

On perusal of the ratio of the judgments rendered by the Apex Court, it is held that if the learned ITAT, on consideration of material and relevant facts, had arrived at the conclusion which is a possible conclusion, the same must be allowed to rest even, if this court is inclined to take another view of the matter.

In the case at hand, logical reasonings was given by the learned ITAT and there is no gross violation of the procedure or principles of natural justice occasioning a failure of justice.

Therefore, this court is of the view that no substantial question of law arises in the matter and therefore, the appeal filed by appellant is dismissed.

1.5.1 Section 56(2)(x) allows to adopt stamp duty value of the year of agreement: The provisions of section 56(2)(x) read as under:

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ten per cent of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of agreement for transfer of such immovable property:

Thus the perusal of the above provision would show that the assessee may adopt the value of stamp duty as on the date of agreement if the following two conditions are fulfilled:

(i) where there has been agreement between the buyer and seller and

(ii) the part consideration has been paid otherwise than by cash

Now in the present case there has been agreement between the builder and the assessee and further the consideration has also been paid through cheque and hence covered by the above proviso.

1.6.1 Copy of agreement enclosed: We are enclosing herewith the copy of agreement dt.10-4-2015 (PB 56-61) between the builder and the assessee. It may be noted that the agreement duly witnessed by two witnesses and name and full addresses of witness are duly appearing on last page of the agreement.

1.6.2 Agreement not found to be false: It is important to note that the Id. Pr. CIT has not questioned the correctness or authenticity of the agreement anywhere in the order and as such the agreement has to be accepted as complete and correct and accordingly the assessee is eligible for the benefit of the proviso of section 56(2)(x) of the Act.

1.7 Consideration paid through cheque i.e. otherwise than by cash: The assessee made the following payments to the builder through account payee cheques:

Sr.	Date	Cheque no.	Name of bank/ account no.	Amount	PB-cheque	PB-bank statement
1	5-6-2014	207164	Axis Bank 909010035496123	1400000	70	63
2	4-7-2014	306821	Axis Bank 176010100194129	200000	71	66
3	10-8-2014	306826	Axis Bank 176010100194129	223000	72	67
4	2-11-2015	322612	Axis Bank 176010100194129	200000	-	-
	Total			Rs.2023000/-		

All the above details have been submitted during the course of assessment proceedings as well as the revisionary proceedings and this has duly been accepted. Thus the complete part payment has been made by the assessee otherwise than through cash and the requirement of the provision has been fulfilled.

1.8 Bank account in the name of assessee only-wife only joint holder: It may be noted that both the bank accounts are in the name of the assessee i.e. Arvind Kumar Agarwal only and his wife Tripta Agarwal is only a joint holder. We are enclosing herewith the copies of both the bank statements for the relevant period:

Axis Bank 909010035496123 PB 62-65

Axis Bank 176010100194129 PB 66-69

On the first page of the bank statement, it is clearly mentioned that the account holder name is Arvind Kumar Agarwal i.e. assessee and his wife name is appearing as joint holder

Therefore, it is clear that both the conditions for claiming of the benefit of proviso to section 56(2)(x) has been fulfilled by the assessee.

1.9 Value of property Rs.6504595/- only as per ready reckoner of year 2015: As the assessee has fulfilled both the conditions for claiming of benefit of the proviso, the stamp duty value of year 2015 has to be adopted and the same is less than the purchases consideration.

1.10 Payments made under agreement duly accepted in the registered sale deed: It may be noted that the payment made by the assessee to the tune of Rs.2300000/- has duly been recognized in the registered agreement and the same is appearing (z) of the agreement at PB 19.

1.11 Ready reckoner rate of different year enclosed: Total area of the property is 72.51 Square Meter and as per the same the value of property comes as follows:

1. As per RR rate in June 2014 per sq mtr rate is Rs.71800/- which amounts to Rs.5206218/- (PB 73)
2. As per RR rate in April 2015 per sq mtr rate is Rs.89700/- which amounts to Rs.6504595/- (PB 74)
3. As per RR rate in Jan 2018 per sq mtr rate is Rs.118030/- which amounts to Rs.8558945/-

Thus it would be seen from the ready reckoner rate in April 2015 when the agreement of purchases of property was entered in between the builder and the assessee, the value of the property come at Rs.6504595/- which is even lower than the consideration of Rs.6700000/- for which the property has been purchased and as such no income is taxable.

1.12 Baseless allegations and conclusions by the Id. PCIT: We may submit that while passing order u/s 263 of the Act, the Id. PCIT has made certain allegations, however the same are baseless and unsustainable in the eyes of the law. The table containing such allegations and our explanation is appearing below:

Sr.	Allegation/ Observation of Id. PCIT	Explanation
1	In the agreement dt.10-4-2015, there is mention of payment of Rs.1326208/- but the assessee claimed payment of Rs.1400000/-. Thus the claim of payment of Rs.1400000/- not matching	<p>Rs.1326208/- only refers to 20% of the purchases consideration which was determined at Rs.6631040/- at the time of agreement as required to be paid before the date of agreement. This is clear from point no.1 at PB 58-59. The assessee made payment of Rs.1400000/- which is over and above the required payment and which included service tax and other charges which are to be paid over and above the consideration.</p> <p>In any case, the consideration has paid through account payee cheques and details have been submitted. These payments have nowhere been questioned and stands fully accepted</p> <p>Further the authenticity of the agreement also remain accepted and not questioned</p>
2	Cheque has been issued by some other person and not by the assessee	<p>This is very shallow observation of the Id. PCIT.</p> <p>We have already enclosed the copies of cheques issued and it is clear from the perusal of the cheque that the same has been signed by Smt. Tripta Agarwal who is wife of the assessee. Further the assessee is the first account holder of the account thus the payment has effectively been made by the assessee only and not by some other person.</p> <p>So long as the amount is debited from the bank account of the assessee, it is irrelevant that the cheques are signed by some other authorized signatory or joint holder and in the present case, joint holder is his wife only</p>
3	Payment not mentioned in the registered agreement dt.31-1-2018	<p>It is incorrect observation of the Id. PCIT. The assessee made total payments of Rs.2300000/- before the date of registered agreement. The reference of total payment of Rs.2300000/- is duly appearing at:</p> <p>(i) Clause (z) of the agreement at PB 19 and (ii) At PB 51 of the registered agreement.</p>
4	Payment not mentioned in the agreement dt.10-4-2015	<p>This is also incorrect observation of the Id. PCIT and the reference of the payment is duly appearing at point no.1 at PB 58-59 wherein the payment of 20% of the consideration is duly noted. So long as the payment has been made over and above the minimum required payment, the conditions of the agreement has been satisfied</p>

Thus the entire observations of the Id. PCIT were baseless and unsustainable in the eyes of the law.

1.13 Even allotment letter held to be agreement to sale: We may submit that even the allotment letter issued by the builder has been treated as agreement to sale and in the present case the case of the assessee is much better as it has presented the copy of agreement. Please refer decision of hon'ble Mumbai Bench in case of Sulochana Sajjan Modi vs. ITO in ITA No. 557/Mum/2023 dt.23-5-2023 (PB 90-107).

Thus, there is no reason to hold the assessment completed by the Id. AO (NFAC) as erroneous.

*"Hence considering the entire facts and circumstances of the case the assessment order in question is neither erroneous nor prejudicial to the interest of the revenue and therefore, the revisionary proceedings u/s 263 is bad in law and hence to be quashed."*

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

Sr.	Particulars	Pages
1	Copy of response submitted before the Id. PCIT dt. 17.03.2023	1-2
2	Copies of response submitted before the Id. ACIT (NFAC) dt. 05.02.2021 and 25.03.2021	3-5
3	Copy of contract of sale entered between Shiv Shakti Builders & Developers and Arvind Kumar Agarwal dt. 31.01.2018	6-55
4	Copy of Agreement for sale entered between Shiv Shakti Builders & Developers and Arvind Kumar Agarwal dt. 10.04.2015	56-61
5	Copy of bank account details of account no. 909010035496123 in case of Arvind Kumar Agarwal	62
6	Copy of bank account statements	63-69
7	Copies of cheques issued to builder i.e. Shiv Shakti Builders & Developers	70-72
8	Copy of DLC rates for the year 2014 & 2015	73-74
9.	PCIT vs. Naina Saraf in DB ITA No. 16/2022 dt. 09.05.2022	75-80

10.	Benjudhar Gokulanand Biswal vs. National E assessment Centre in ITA No. 202/Mum/2023 dated 29.05.2023 (Mumbai. Trib.)	81-89
11.	Sulochana Saijan Modi vs. ITO, National E-Assessment Centre, Mumbai in ITA No. 557/Mum/2023 dated 23.05.2023	90-107

7. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the Id. PCIT has no jurisdiction to excise the power vested u/s. 263 of the Act as the assessee's address as per the assessment order as well as of the return of income filed is of Gurgaon state Haryana and thus the PCIT of Jaipur, Rajasthan has no jurisdiction to invoke the provision of section 263 of the Act.

On merits of the case of the assessee he argued that the issue which the Id. PCIT raising has already been examined by the Id. AO and the assessee has filed the relevant submission on the issue vide submission dated 05.02.2021 and 25.03.2021 and he read the relevant submission placed on record in the paper page 3 to 5. He also submitted the argument that assessee has paid the money by an account payee cheque dated 05.06.2014 and 06.07.2014 and therefore, the case of the assessee should be governed by the agreement dated 10.04.2015 and thus, once the assessee has paid the money on earlier date by an account payee

cheque the case of the assessee falls under the exemption provided in section 56(2)(x) and the Id. AO has verified the issue the Id. PCIT cannot raise the same again so as to reverify the same and the contract of sale is formally entered into on 31.01.2018 so the stamp duty rate should be governed by the agreement dated 10.04.2015.

8. Per contra, the Id DR so far as the jurisdiction of the assessee with the PCIT, Jaipur he stated that the same lies with the PCIT, Jaipur-1 and the assessee has not supported his contention with any supporting evidence. Merely filling the return of income and assessed on the different address the jurisdiction cannot be transferred it has certain formality by the assessee and even by the revenue and therefore, the contention raised by the assessee has no force.

So far as the merits of the case the Id. DR is heard who relied on the detailed finding recorded in the order of the PCIT and has also filed a detailed written submission in support of the order of the Id. PCIT. The written submission so filed by the Id. DR reads as under :

"During the course of hearing today, the Id. A/R has pointed out that as per the page 19 of the paper book submitted on 28.06.2024, as per clause 'Z',

"Prior to the execution of this Agreement the Purchaser/s, after deducting the statutory deduction as TDS as per Section 194-IA of Income Tax Act 1961, has/have paid to the Promoters a sum of Rs. 20,23,000/- (Rupees Twenty Lakhs Twenty Three Thousand Only) being the earnest money/part payment (since the construction work of the building/wing is presently completed upto Plinth/Slabs) for allotment of the said premises, agreed to be sold and allotted, by the Promoters to the Purchaser/s and Purchaser/s has/have agreed to pay to the Promoters the balance of the sale price/consideration in the manner, hereinafter appearing;

aa. Under Section 13 of the said Act, the Promoters herein are required to execute a written Agreement for Sale of the said premises/unit with the Purchaser herein, being in fact these presents and also to register this Agreement under the Registration Act, 1908."

Now, for the agreement to be full-filled by the buyer and the payments mentioned to be made by Sh. Arvind Kumar Agrawal, the TDS as per Section 194 IA has to be made by Sh. Arvind Kumar Agrawal but no TDS details have been submitted to substantiate this stand.

The Id. PCIT-1, Jaipur in para No. 11, 12 and 13 of the order u/s 263 at page '4 to 5' of the order has stated:-

11. "Perusal of the "agreement to sale dated 30.01.2018 shows that it is the registered document. As per the paragraph-11 of page-12 of the said document, an amount of Rs. 20,23,000/- is to be paid by way of earnest money/part consideration on or before the execution of the said agreement and balance amount of Rs. 46,77,000/- is to be paid as per Annexure "L" of the said document

12. Thus, it is seen that both the documents are "agreement for sale" and that the document dated 30.01.2018 has been registered. Both the documents are for the purchase of a flat by the assessee from Shiv Shakti Builders and Developers. It is also noted that the document dated 30.01.2018 pertains to an agreement and is not deed of sale as the full payment has not been made by the assessee. It is also noted that the cheques claim by the assessee to have been paid to the builders and developers under reference has not been given by himself it has been signed by Tripta Agarwal, in view of the same the agreement dated 30.01.2018 would be taken as the agreement for sale u/s. 56(2)(x) of the Act and the provisions of the said section would accordingly apply.

13. The assessee has claimed benefit under first proviso to section 56(2)(x) of I.T. Act, 1961 on the ground that the stamp duty value on the date on unregistered agreement i.e. 10.04.2015 should be taken for the purposes of this section as part of consideration has been paid by him through account

payee cheque 05.06.2014 before the date of agreement for transfer of such immovable property ie. dated 10.04.2015, However, as discussed above, this claim of the assessee is not found supported by the contents of agreement dated 10.04.2015 and details of payment furnished by the assessee. In the agreement dated 10.04.2015, there is mention of payment of Rs. 13,26,208/- before agreement but the assessee has claimed payment of Rs. 14,00,000/- on 05.06.2014. Thus, the claim of assessee is not matching with the contents of the agreement dated 05.06.2014.

Further, it is noticed that the claim of payment by assessee by cheques of Rs. 14,00,000/- Rs. 2,00,000/- and Rs. 2,23,000/- is not correct as these payments have actually not been made by the assessee but these cheques were issued by some other person i.e. Ms. Tripta Agrawal. Moreover, it is important to mention that such payments are not mentioned anywhere in the unregistered agreement dated 10.04.2015 or registered agreement dated 30.01.2018. Thus, it is clear that the assessee has failed to prove full-fulfillment of condition given in second proviso of section 56(2)(x) i.e. payment of port amount of consideration by account payee cheque on or before the date of unregistered agreement. So, the assessee is not entitled to take benefit of first proviso, which provides for adopting stamp duty value as on the date of unregistered agreement i.e. 10.04.2015. Accordingly, stamp duty value on the date or registered agreement i.e. 30.01.2018 is to be taken for purposes of section 56(2)(x)."

From these paras it is clear that payments were made by Ms. Tripta Agarwal though made from a joint account of Mr. Arvind Kumar Agrawal and Ms. Tripta Agarwal but since the person making the payment would deduct the TDS, hence, when Ms. Tripta Agarwal is making the payment, it cannot be treated as payment made by Mr. Arvind Kumar Agrawal."

9. The Id. DR also supported that the payment made by the assessee to the builder not at time executing the agreement but it was beyond that date of agreement. The agreement mentioned in the 2018 has not correct reference of the earlier date wise payment and the even the agreement dated 2015 is silent. The assessee made the payment in 2014 entered into the agreement dated 10.04.2015 has no meaning as it is evident that the same is also

not registered one whereas the agreement dated 31.01.2018 is registered one.

10. We have heard the rival contentions and perused the material placed on record. As regards ground Nos. 1 & 2 raised by the assessee about the jurisdiction of PCIT to invoke the provision of section 263 of the Act on the order of the National Faceless Assessment Unit, the bench noted that the assessment order though, the assessee has filed the return of income at the address mentioned in the ITR as Hariyana but as per record of the revenue and even today as per PAN data base the jurisdiction rest with the PCIT, Jaipur-1 and the relevant online records thus shows the jurisdiction of the assessee as under :

The screenshot shows the e-Filing portal interface. At the top, there is a navigation bar with the e-Filing logo and text 'Anytime Anywhere' and 'Income Tax Department, Government of India'. Below this, there are several menu items: 'Home', 'Individual/HUF', 'Company', 'Non-Company', 'English', 'Tax Professionals & Others', 'Downloads', and 'Help'. There are also 'Login' and 'Register' buttons. A breadcrumb trail is visible: 'Home > Know Your A.O.'. Below the breadcrumb, there are three steps: 'Enter Details', 'Verification', and 'Jurisdictional A.O. Details', with the third step being the active one.

## Know Your Jurisdictional Assessing Officer

Basic Details
PAN <b>AAMPA7525N</b> Name <b>AXXXXD KXXXR XXXXXL</b> Indian Citizen <b>Y</b> Status <b>ACTIVE</b>

  

Jurisdictional Details
Area Code <b>RJN</b> AO Type <b>W</b> Range Code <b>101</b> AO Number <b>4</b>  Taxpayer Jurisdiction <b>ITO WD 1(4), JPR</b> Building Name <b>C.R. BUILDING, JAIPUR</b> Email ID <b>JAIPUR.IT01.4@INCOMETAX.GOV.IN</b>

On perusal of the above details, the jurisdiction belongs to the PCIT, Jaipur-1, and contentions raised by the assessee has no force as per the records available with the revenue. Since, the assessee has not given any proof that he has corrected his address on the data base of the revenue the jurisdiction rest with the ITO, Ward 1(2), Jaipur and consequently, Id. PCIT, Jaipur has appropriate jurisdiction as per provisions of section 263 of the Act. On the contrary, the Id. AR of the assessee was confronted to at

time of hearing to submit any proof for change of address in the PAN data base he remained silent. He did not produce any record to support this contention. Merely, filing the tax return to a different address without correcting records of the revenue in the PAN data base, the contentions raised by the assessee has no force and therefore, ground Nos. 1 & 2 raised by the assessee stands dismissed.

11. As regards ground No. 3 & 4 stating that the issue of applicability of provisions of section 56(2)(x) has already been raised and verified by the Assessing Officer for which the Id. AR of the assessee relied upon the submission made on 05.02.2021 and 25.03.2021 (APB 3 to 50. The bench noted that based on the evidences placed on record that the agreement dated 10.04.2015 reference to the property for which the assessee is claiming that the assessee has made the investment long back is extracted herein below:-

**Extracted from the paper book page 58**

“NOW THIS AGREEMENT WITNESS AND IT HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS;

1. The developers hereby agree to reserve a flat in the Sale Building under construction in the name of Purchaser @ value Rs.

66,31,040/- i.e. Rs. 10,889/- per sq. feet for a flat of 609 sq. ft. of Carpet Area, including Car Parking.”

Whereas the subsequent agreement dated 31.012018 which is related to the year under consideration is extracted herein below;

**Extracted from the page 18 of the paper book**

“u. On the application if the Purchaser/s herein, the Promoters have allotted to the Purchaser/s and the Purchaser/s has/have agreed to purchase from the Promoters a residential premises being Flat No. 1503 admeasuring 619 sq.ft i.e. 57.45 sq.mtrs. (carpet area as defined hereafter as per RERA) on 15<sup>th</sup> floor of the Wing ‘B’ Wing in the building/project known as ‘Tower-28 (for short ‘the said Flat”) Annexed and marked Annexure ‘D’ hereto being constructed by the Promoters on the portion of the said property at or for the lump sum consideration of Rs. 67,00,000/- (Rupees Sixty Sever lacs).”

On comparing both deed, the bench noted that the area and consideration in both deed are different and therefore, the contentions so as to non applicability of provisions of section 56(2)(x) as contended the deed itself does not matches and therefore, the contention raised by the assessee has been misplaced and misguided fact as argued by the Id. AR of the assessee. There is no reference of such deviation as to why the same has happened is not mentioned in the submission so filed. Had it been so the assessee should have clarified that the both the deeds relate to the same property. Moreover we not that the

reference to the payment are also not dealt with the payment made. Even the details of the TDS deducted as per provision of section 194IA has not been placed on record even though as contended by the Id. DR.

In the light of the facts so discussed the Id. AR of the assessee failed to convince that the agreement dated 10.04.2015 relates to the same property and therefore, provision of section 56(2)(x) should have not been applied and if so of 2015. But here the fact as discussed being different we are of the considered opinion that considering the facts available on record we do not find any merits to deviate from the finding of recorded by the Id. PCIT. Therefore, ground No. 3 and 4 raised by the assessee stands dismissed.

In the results, the appeal of assessee stands dismissed.

Order pronounced in the open court on 29/08/2024.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 29/08/2024  
\*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- Arvind Kumar Agrawal, Gurgaon
2. प्रत्यर्थी / The Respondent- PCIT, Income Tax Department
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 139/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar