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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 271/JP/2020
Assessment Year: 2015-16

Naina Saraf, B-93, Surya Marg, Tilak Nagar, Jaipur.	बनाम Vs.	Pr.CIT-2, Jaipur.
PAN No.: AEVPS 4665 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 18/06/2021
उदघोषणा की तारीख / Date of Pronouncement : 14/09/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the ld. Pr.CIT-2, Jaipur dated 28/02/2020 passed U/s 263 of the Income Tax Act, 1961 (in short, the Act) for the A.Y. 2015-16. The assessee has raised following grounds of appeal:

"1. The ld. Pr.CIT-2, Jaipur seriously erred in law as well as on the facts of the case in invoking the provisions of Section 263 of the Act and therefore, the impugned order dated 28/02/2020 u/s 263 of the Act kindly be quashed.

2.1 The ld. Pr. CIT 2, JAIPUR seriously erred in law as well as on the facts of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly holding that the subjected assessment order passed u/s 143(3) dated 21.12.2017, was without considering the implication of the provisions of Sec. 56(2)(vii)(b)(ii) according to which, there was a

difference of Rs. 16,42,994/- (i.e. 50% of the total difference of 32,85,987/-) between the declared sale consideration and the stamp duty. The assumption of jurisdiction u/s 263 being contrary to the provisions of law and facts on record, hence, the proceedings initiated u/s 263 of the Act and the impugned order dated 27.03.2019 deserves to be quashed.

2.2 The ld. Pr. CIT 2 JAIPUR, Jaipur erred in law as well as on the facts of the case in wrongly setting aside the assessment order date 21.12.2017 despite there being complete application of mind by the AO on the subjected issues and it was nothing but a case of change of opinion, based on which, assumption of jurisdiction u/s 263 is not permissible. The impugned order dt. 28.02.2020 therefore, lacks valid jurisdiction u/s 263 of the Act and hence, the same kindly be quashed.

Alternatively and without prejudice to the above

3.1 The ld. Pr. CIT 2, JAIPUR erred in law as well on the facts of the case in applying the provisions of sec. 56(2)(vii)(b)(ii), which is completely contrary to the provisions of the law and the facts available on the record, hence the impugned finding that the assessment order passed u/s 143(3) 21.12.2017 was erroneous and prejudicial to the interest of the revenue to the extent of short assessment of Rs. 16,42,994/-, deserves to be completely quashed and set-aside.

3.2 The Id. Pr. CIT 2, JAIPUR further erred in law as well on the facts of the case in denying the benefit of the First Proviso to Sec.56(2)(vii)(b)(ii) and completely ignoring the facts already available on record that there was a difference between the date of agreement and the date of the registration of the property. Therefore, the stamp duty valuation must have been computed w.r.t the former dateonly. Hence the appellant kindly be declared as entitled to the benefit of the said Proviso and the higher amount of the capital gain computed by the Pr. CIT 2 , JAIPUR of 16,42,994/- deserves to be deleted.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assesse is an individual and is a practicing advocate at Rajasthan High Court. During the year under consideration, the assesse e-filed her return of income on 26.08.2015 declaring total income at Rs.27,38,450/- showing income from house property, professional income and income from other source. The case of the assessee was selected under CASS for the reason of "Purchase of property". During the assessment proceedings, notice u/s 142(1) of the Income Tax Act, 1961 (in short, the Act) along with questionnaire was issued to the assessee asking various details w.r.t. the purchase of property. In response of the same the assessee filed registered purchase deed and other details as required by the AO. Finally, the AO after examining all the details and documents filed, accepted the return of income vide his order dated 21.12.2017 passed u/s 143(3) of the Act. Later on, the ld. Pr. CIT-2, Jaipur observed that the assessee had purchased an immovable property (Flat No. 201 at Somdatt`s Landmark, Jaipur) for a consideration of Rs.70,26,233/- as co-owner with 50% share in the said property, the Stamp Duty Value (SDV) was determined at Rs. 1,03,12,220/- as against the declared purchase consideration of Rs.70,26,233/- and therefore, consequently, the difference amount of Rs.32,85,987/- was to be treated as income from other sources. However, the AO failed to invoke the S.56(2)(vii)(b) 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. Accordingly, invoking revisionary powers u/s 263 of the Act, issued show cause notice dated 27.01.2020, in response to which, the assessee filed detailed written submissions on 10.02.2020 and 11.02.2020, however, the ld. PCIT held that the assessment order dated 21.12.2017 as erroneous & prejudicial to the interest of the Revenue by observing as under:

> *"5. I have gone through the submissions filed by the AR, the assessment order and the case records in this case. It is seen that the return of income for A.Y. 2015-16 was e-filed at a total income of Rs. 27,38,450/- on 26.08.2015. The case was selected for limited scrutiny through CASS on the reasons of "Purchase of property". The assessment was completed on 21.12.2017 accepting the returned income. Assesse in the year under reference had purchased an immovable property, jointly with her share as 50%, for a consideration of Rs. 70,26,233/-. It is further seen that the sale deed/conveyance deed in respect of this property was entered into on 09.12.2014 and the sale deed was also got registered on 09.12.2014. It's value for stamp duty purposes was taken at Rs. 1,03,12,220/-. Thus, there was a difference of Rs. 32,85,987/- and 50% thereof comes to Rs. 16,42,994/-. It is seen that the assesse applied for the flat on 23.09.2006. In response thereto, the assesse was issued allotment letter dated 06.03.2009. It is mentioned in the allotment letter that flat no. 201-Ruby was provisionally allotted which was subject to further changes by the sanctioning authority/architects or builder during the course of construction as mentioned in the said letter. It is seen that after the allotment letter, sale deed dated 09.12.2014 was executed between the builder and the buyers. This sale deed was registered and the value for the purpose of stamp duty was determine at Rs. 1,03,12,2201-. There was no agreement for sale entered into prior to the sale deed. It is also noted that Rs.25,00,000/- were paid on 28.11.2014. The provisions of clause (vii) of sub-section (2) of section 56 of the Act reads as follows:*
>
> *x x x x x*

It may be seen that sub clause (b) to clause (vii) of sub section (2) to section 56 was substituted by the finance Act, 2013 so as to bring to tax if consideration paid is less than the stamp duty value of the property by an amount exceeding Rs. 50,000/- as against the earlier provision which did not cover a situation where property was received by an individual or HUF for inadequate consideration. The relevant part of the explanatory memorandum issued vide circular no. 03/2014 is reproduced below

x x x x x

Thus in view of provisions of Section 56(2)(vii)(b)(ii), the difference between stamp duty value and purchase consideration was required to be added as income from other sources. It is noted in this case that there was no agreement for sale as such and the sale deed/ conveyance deed was entered into on 09.12.2014 and therefore the provisions of section 56(2)(vii)(b)(ii) were clearly applicable. Assesse cannot be given benefit under first Proviso to the said section as the date of sale deed and registration are the same. The assesse has placed reliance on the judgment of Hon'ble ITAT given in the case of Sh. Sanjay Kumar Gupta, the facts of which are not identical in as much as in that case there was an agreement to sale dated 15.09.2013 with the builder at the time when the agreement for transfer of the said property was entered into by Sh. Nav Naresh Jhawar with Sh. Sanjay Kumar Gupta.

6. In view of the above, I hold that the order passed by the AO on 21.12.2017 was erroneous and prejudicial to the interest of the revenue. The order passed by the AO thus deserves to be set-aside. The AO shall complete the assessment a fresh after giving opportunity to the assessee.

4. Now the assessee is in appeal before the ITAT against the impugned order passed by the ld. PCIT on the grounds mentioned above. The ld AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. Pr.CIT and has also relied upon the written submissions filed by the assessee before us and the contents of the same are reproduced below:

"1. Legal Position on Sec.263 – Judicial Guideline: Before proceeding, we may submit as regards the judicial guideline, in the light of which, the facts of this case are to be appreciated.

1.1 The pre-requisites to the exercise of jurisdiction by the Commissioner u/s 263, is that the order of the Assessing Officer is established to be erroneous in so far as it is prejudicial to the interest of the Revenue. The Commissioner has to be satisfied of twin conditions, namely (i) The order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent i.e. if the assessment order is not erroneous but it is prejudicial to the Revenue, Sec.263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous as also prejudicial to revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law.

Reliance was placed on the decision in the case of Malabar Industrial Co. Ltd. v/s CIT (2000) 243 ITR 83 (SC) and CIT v/s Max India Ltd. (2007) 295 ITR 282 (SC)

2. On Merits:

2.1 Present case covered by pre amended law- Amendment made prospective: Another important aspect to be considered is that in the pre amended law,

there was only one condition to apply the provision of S.56 (2)(vii)(b) which speak of difference between the declared consideration and the SDV only in a case of sale of immovable property which was sold completely without consideration. The pre amended law never contemplated a situation where such difference was noticed on account of inadequate sale consideration. It is submitted that the provision of S.56(2)(vii)(b) was substituted by the Finance Act, 2013, whereby one more clause (ii) was added to cover such a situation. However, the same was specifically made applicable for and from A.Y. 2014-15 onwards only but was not applicable retrospectively in A.Y. 2010-11.

2.2 It is submitted that the assesse applied for purchase of Flat No.201 on 23.09.2006 (as mentioned in allotment letter) and paid Rs.7,26,500/- (Rs.6,63,000/- through Ch. No. 489569 and Rs.63,500/- through Ch. No. 489570) from saving A/c No. 11023 of Indian Overseas Bank on 03.10.2006(PB 40). The seller company M/s SDB Infrastructure Pvt. Ltd. (erstwhile Som Datt Builders Pvt. Ltd.) issued allotment letter on 06.03.2009 (A.Y. 2010-11) to the assesse (PB 8-14). On 11.11.2009, the assesse agreed to purchase the property measuring 2150 Sq. ft at the rate of 3,050/- per Sq. ft. for a sum of Rs.65,57,500/-(Rs.70,26,233/- including registration, stamp and maintenance) as per terms and condition mentioned in the allotment letter dated 06.03.2009. (PB 8-14).

2.3 Pertinently, the assesse paid Rs.45,26,233/- through various cheques as mentioned in the registered sale deed before 05.04.2008 (PB 23). Thus, the maximum purchase consideration was paid at the time of agreement to purchase itself in F.Y. 2009-10 (A.Y. 2010-11) and the purchase was de facto completed except for the formality of registration only. The balance amount of Rs.20,31,267/- (out of total purchase consideration of Rs.65,57,500/) was kept pending because of security and for registration purpose only.

2.4 The facts of this case clearly suggest that the purchase transaction effectively took place in A.Y. 2010-11 itself only and not in A.Y. 2014-15 when actual registration took place. In absence of clause (ii) in

S.56(2)(vii)(b), the AO could not have covered the transactions of inadequate consideration. Therefore, the case of the assesse would be governed by the pre-amended provision of S.56(2)(vii)(b) of the Act which, triggers the applicability of such provision only where there is a total lack of consideration and does not cover a case of inadequacy in purchase consideration.

3. *Benefit of First Proviso to S.56(2)(vii)(b) available to the appellant: It is submitted that the ld. Pr. CIT has wrongly denied the benefit of the First Proviso by alleging that there was no prior agreement for sale as such between the parties and the sale was entered into only on 09.12.2014 falling in the subjected assessment year and also therefore, the date of the sale deed and the date of registration is the same hence, the assesse could not be given the benefit of the said Proviso.*

   At the outset however, such a conclusion is nothing but a purported mis-appreciation of the fact and mis-understanding / mis-reading of the related provision:

4. *In the instant case undisputed facts are that to purchase the subjected property being Flat-201, the assesse was required to submit an application, which was made in this case on 23.09.2006, pursuant to which, an allotment letter was issued on 06.03.2009, executed and signed by the assesse – allottee on 11.11.2009 containing all the terms & conditions and also the exact amount of the sale consideration agreed upon by the parties i.e. Rs.65,57,500/-(PB 8-14). A bare perusal of the allotment letter shows that all the substantive terms & conditions which bind the parties, creating their respective rights & obligations are contained therein. The said allotment letter also speak of providing possession of the subjected property within a period of 30 months from the date of the allotment (except some unavoidable reasons) vide clause no.14 (PB-12). Hence, there was an offer, acceptance by the competent parties for a lawful purpose. Thus, such allotment letter is having all the attribute of an agreement as per the provision of the Indian Contract Act, 1872.*

This way, this was a lawful agreement binding upon the parties entered into on 11.11.2009 whereby, the assesse got a right and interest in Flat-201, more so, when the substantial part of the consideration being Rs.45,26,233/- (Out of Rs.65,57,500/-), was already paid before 05.04.2008 (as per Table PB-23) i.e. well before the said date of execution of allotment letter dated 11.11.2009.

4.1 Allotment Letter – not provisional : The ld. Pr. CIT however, alleged that such allotment letter dated 06.03.2009 was a provisional allotment and was subjected to further changes but a perusal of relevant clauses at Pg-1 (PB 9) shows that the provisional nature of allotment was only because of some unexpected happenings like some changes which may be by the Authority or by the Architect or by the Builder which may result into increase and decrease in the area or where there is absolute deletion of the apartment from the sanction plan. But for all intended and practical purposes it was a complete agreement between the parties which was even duly acted upon by both of them. Kindly refer Hansmukh N. Gala (infra).

He relied on the following case laws:

i. Shikha Birla Vs. Ambience Developers Pvt. Ltd., MANU/DE/2524/2008 (DPB 36-44)

ii. In another case before Maharashtra RERA Appellate Tribunal, Dilip M. Muni and Ors. Vs. Monarch & Qureshi Builders, MANU/NULL/0062/2019, (DPB 28-35).

5. Another aspect, having an important bearing over the issue in hand is that the provision uses the word <u>receives</u> in the context of the assesse buyer but does not uses the word <u>purchases</u> or <u>transfer</u> therefore, legislature never contemplated the receipt of the subjected property as a complete formal transfer by way of registration of the property purchased so as to invoke S.56(2)(vii)(b)(ii). Because this has the effect of deferring the taxability and late receipt of the revenue from the taxpayer. On the contrary, by using the word <u>receives</u> the legislature has advanced the taxability (provided the

assesse clearly falls within the four wall of the provision as existed on the date of such receipt of the subjected property). The receipt of the property simplicitor happened in A.Y. 2010-11 and not in the subjected year i.e. A.Y. 2014-15 where mere registration and other legal formalities were completed. The assesse's right stood created and got vested at the time of the signing of the allotment letter itself by both the parties on certain terms & conditions and on specific purchase consideration. What happened later on was a mere affirmation / ratification by way of registration of the sale transaction in this year.

5.1 Following submissions were made before the ld. Pr. CIT vide submission dated 11.02.2020 (PB 6) which were not paid due attention. The extract of the same is as under for the sake of convenience:

> *"That the assesse was a co-owner with 50% share in flat No. 201 at Som Datt`s Land Mark. The assesse applied for the said flat on 23.09.2006. The application was approved and the assesse was offered allotment letter dated 06.03.2009 vide which flat No. 201 was allotted on terms & condition of the allotment letters. The flat was got registered in the name of assesse along with her husband on 09.12.2014. The assesse had paid 64.41% of the agreed payment by January, 2008 and the balance was to be paid at the time of registration. The price of the flat was 70,26,233/-. The said flat was registered was in the year 2014 and for stamp duty purpose the value of the property for the year 2014 was taken. It is further submitted that as the assesse has purchased the flat the provisions of section 56(2)(vii)(b)(ii) are not applicable. It is further submitted 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. He has also placed reliance on the judgment of Hon'ble ITAT in the case of Sanjay Kumar Gupta vs. ACIT, Jaipur. The AR has pleaded that the order passed by DCIT, Circle — 6, Jaipur was not erroneous and prejudicial to interests of revenue.*

5.2 Therefore, the SDV as on date of agreement (06.03.2009 / 11.11.2009) must have been taken for the purpose of invoking S.56(2)(vii)(b). The SDV on the date of agreement of was almost the same (agreed consideration). Since there is no difference between the SDV and the purchase consideration.

There was no scope of making any addition. The ld. AR relied on the following case laws:

i. *Bajranglal Naredi vs. ITO (2020) 203 TTJ 925 (Ranchi)*

ii. *ACIT vs. Anala Anjibabu (2020) 207 TTJ 239 (Visakha)*

iii. *Sanjay Kumar Gupta vs. JCIT in ITA no. 227/JP/2018 order dated 05.10.2018*

iv. *Hansmukh N. Gala vs. ITO (2015) 173 TTJ 537 (DPB 23-27),*

v. *CIT vs. Kuldeep Singh (2014) 270 CTR (Del) 561.*

6. *No understatement established by the revenue: There is no allegation nor there is any evidence to show that the assessee has actually paid extra amount over and above the agreed purchase consideration of Rs.70,26,233/, which is the basic purpose and the underlying idea behind introduction of provision like S.50C, S.43CA, S.56(2)(vii)(b) etc.The fulfillment of this condition is a must before assessing any income in the hands of the buyer (or in the hands of the seller for that reason). The law on this aspect has been explained in the context of S.52(2) of the Act by the Apex Court in the case of K.P. Varghese v/s ITO & Anr. (1981) 24 CTR 358/131 ITR 597 (SC).*

   Similar view has been taken in the case of CIT v/s Shivakami Co. (P) Ltd. (1986) 159 ITR 71 (SC) holding that unless there is evidence that more consideration than what was stated in the document of transfer was received, the declared sale consideration was to be accepted. This has been followed in CIT v/s Raja Narendra (1994) 210 ITR 250 (Raj.)

7. *Contradictory Approach: The approach of the ld. Pr. CIT appears to be contradictory and rather incomplete in as much as no addition of the alleged difference between the SDV and the declared purchase (sale) consideration, is reported in the hands of the Seller-Developer u/s 43CA which was also made applicable for A.Y. 2014-15 itself. Also no such addition has been reported in the hands of the joint buyer, in absence of which, the subjected assessment in the hands of the appellant cannot be held as erroneous.*

8. Substitution of opinion not Permissible-Possible view taken by the AO: The law is well settled that the CIT cannot substitute his own opinion and if legally possible view has been taken by the AO, the CIT cannot invoke revisionary powers. There is no allegation in the impugned order that no enquiry was made by the AO or that there was non-application of mind by the AO. Moreover, the very fact of selection of the case under CASS was specifically meant and for the reason "Purchase of Property" and thereafter, the case was completed as a Limited Scrutiny Assessment u/s 143(3). It is also admitted that the AO issued notice u/s 142(1) along with questionnaire to the assesse asking various details w.r.t. the purchase of property. In response of the same, the assesse filed complete documents w.r.t. the purchase of Flat-201 i.e. Registered Purchase Deed dated 09.12.2014, Allotment Letter dated 06.03.2009, Bank Account etc. which was required by the AO time to time through the A/R, which aspect was duly verified and examined by the AO and it is only after considering all the relevant aspects, the AO decided not to invoke S.56 (2)(vii)(b) of the Act. Thus, the AO did form an opinion and it was nothing but a case of substitution of opinion by the ld. Pr. CIT. From the factual and legal submission made hereinabove, it is evident that the AO has taken a possible view.

Merely because the order is brief and cryptic, that does not render it to be erroneous and prejudicial to the interests of revenue. The ld. Pr. CIT has no jurisdiction u/s 263 to revise the order of the AO simply because he has not made elaborate discussion in the order with regard to the reason mentioned in the CASS. He relied on the decision in the case of Ved Prakash Contractors vs. CIT (2016) 175 TTJ_UO 19 (Chd.

Hence, there was no error committed by the AO therefore, the subjected assessment was beyond the scope of S.263 and deserves to be quashed."

5. On the other hand, the ld CIT-DR has relied on the order passed by the ld. Pr.CIT.

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.

Order pronounced in the open court on 14th September, 2021.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(संदीप गोसाईं)
(VIKRAM SINGH YADAV)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 14/09/2021
*Ranjan
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Naina Saraf, Jaipur.
2. प्रत्यर्थी / The Respondent- The Pr.CIT-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 271/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar