आयकर अपीलीय अधीकरण, न्यायपीठ –"B" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
[Before Hon'ble Shri P. M. Jagtap, Vice president(KZ) and Hon'ble Shri A. T. Varkey, JM]

I.T.A. No. 378/Kol/2020
Assessment Year: 2015-16

Monoj Kumar Biswas (PAN: AHPPB0589B)	Vs.	Principal Commissioner of Income-tax-9, Kolkata.
Appellant		Respondent

Date of Hearing (Virtual)	24.06.2021
Date of Pronouncement	09.09.2021
For the Appellant	S/Shri Dibyangshu Das & Ejaz Khan, Advocates
For the Respondent	Shri John Vincent Donkupar, CIT, DR

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal filed by the Assessee against the order of Ld. PCIT-9, Kolkata dated 13.03.2020 passed u/s 263 of Income Tax Act, 1961 (hereinafter referred to as the 'Act') for Assessment year 2015 16.

2. The assessee has raised, *inter alia*, nine (9) grounds of appeal of which ground no. 9 is general in nature which does not require any adjudication. Ground no.1 and other grounds [except ground no. 2 and ground no. 8] are against the action of the Ld. PCIT in initiating and passing the order u/s. 263 of the Act, which are legal issues, against the invocation of revisional jurisdiction u/s 263 of the Act. And ground no. 2 and ground no. 8 are as under:

> *"2. For that the Ld. PCIT failed to consider the assessment records and erred in setting aside the order dated 18.12.2017, passed by AO u/s. 143(3) and also erred in directing the AO to frame fresh assessment and call for valuation from the competent authority as mandated u/s. 56(2) in relation to the deed of sales agreement and conveyance.*
>
> *8. For that the assessee/appellant had entered agreement of transfer/sale in the FY 2012-13 (AY 2013-14) and as such the provisions of section 56(2)(vii)(b)(ii) which was amended from AY 2014-15 onwards has no applicability in the instant case."*

3. The facts of the case are that the assessee had filed return of income for AY 2015-16 on 29.04.2016 disclosing a total income of Rs.13,25,990/-. The assessee and his wife on 06.02.2013 (*i.e. in FY 2012-13, AY 2013-14*) had entered into an agreement with the developer/seller for booking two flats with parking space at premises No. 35/A, Middle Road, Santoshpur, Kolkata-700 075 for a consideration of Rs. 60,00,000/-. According to the assessee, the said agreement was entered on 06.02.2013 (*AY 2013-14*) when the property was under construction. According to the assessee, the assessee had paid sums of Rs. 3,00,000/-, Rs.21,00,000/- and Rs.36,00,000/- in AYs 2013-14, 2014-15 and 2015-16 respectively by cheque. Thereafter, on completion of construction, sale deed was executed and registered by the developer in favour of the assessee and his wife on 17.02.2015 (*AY 2015-16*) after making entire payment of Rs.60,00,000/- as per the agreement dated 06.02.2013 (*AY 2013-14*). However, at the time of registration, the valuation of the property was based on the circle rate prevailing that year on which stamp duty paid was assessed at Rs.80,82,150/-.

4. Later, the assessee's return of income was selected for scrutiny through CASS on the following issues:

> "1. Large investment in property (Form 26QB) as compared to total income
> 2. Purchase value of property less than the value as per stamp authority."

During the assessment proceedings, the AO had issued show cause notice (*hereinafter referred to as* 'SCN') dated 08.12.2017 asking the assessee to show cause as to why Rs.7,57,600/- (Rs.67,57,600 – Rs.60,00,000/-) as per the valuation report made by the government registered valuer Shri Sarjojit Dutta which was estimated as on the date of agreement i.e. on 06.02.2013 after inspecting the property on 11.10.2017 (*page 9 of the paper book*). Pursuant to the SCN, the assessee replied vide letter dated 12.12.2017 by contesting the addition suggested in the notice and, according to assessee, section 56(2)(vii)(b)(ii) of the Act is not applicable in this case. However, the AO did not accept the same and made an addition of Rs.7,57,600/- vide assessment order dated 18.12.2017.

5. The aforesaid order of the AO was interfered by the Ld. Pr. CIT by finding fault which in his own words reads that "*in your case, pertaining to AY 2015-16, it is*

revealed that you have purchased a property with assessed market value of Rs.80,82,150/- against the consideration paid of Rs. 60,00,000/-. However, the assessing officer relied on the valuation report of a private valuer who is not an approved valuer as per the section of I T Act and added back Rs.7,57,600/- considering the valuation of the property at Rs.67,57,600/- as assessed by the private valuer. This is gross violation of section 56(2)(vii)(b) which in turn appears to have rendered the assessment u/s. 143(3) of the I. T. Act, 1961 as erroneous in so far as it is prejudicial to the interest of Revenue." By issuing this SCN, the Ld. Pr. CIT conveyed his desire to exercise his revisional jurisdiction u/s. 263 of the Act wherein the main thrust of his allegation that AO erred in relying on the estimate of a private-valuer to compute/accept the market value of the flats and thus he erred in passing the assessment order. Pursuant to the SCN (*refer page 1 and 2 PB*) the assessee replied vide letter dated 16.10.2019 (*refer pages 3-4 of PB*) wherein the assessee brought to the notice of the Ld. Pr. CIT that the AO has passed the assessment order after considering the valuation report dated 11 10.2017 of the registered valuer namely Shri Sarbajit Dutta who is an approved valuer as per section 55A of the Act and this valuer has been given Registration Certificate dated 01.11.2011 by the Chief Commissioner of Income Tax (*refer page 13 of PB*) who has valued the property after inspection at Rs.67,57,600/- and, according to assessee, thereafter the AO after considering the estimation by the approved valuer of the department, and being satisfied the AO has accepted the estimate and made the addition of Rs.7,57,600/- which action according to assessee was as per section 50C read with section 55A of the Act. And also the assessee brought to the notice of the Ld. Pr. CIT that section 56(2)(vii)(b) is not applicable in the case of assessee because the agreement for sale took place on 06.02.2013 i.e. AY 2013-14 and the amendment brought in section 56(2)(vii)(b)by inserting sub clause (ii) was inserted by Finance Act, 2013 w.e.f 01.04.2014. And that the assessee had made payments of advance of Rs. 1,00,000/- before the agreement was made on 09.01.2013 and after that has made payments stage wise which is as per the agreement on 06.02.2013 as is discernible at page 12 of the agreement for sale, which is an obligation which the assessee is bound to fulfill pursuant to the agreement for sale/purchase of flats dated 06.02.2013. And that the payments were all made

through bank transaction. After considering the objection raised by the assessee still not satisfied, the Ld. Pr. CIT interdicted the AO's order by exercising his powers u/s. 263 of the Act by pointing out the main fault as under:

> *"2. On subsequent perusal of the assessment record, it was revealed that during the relevant financial year, the assessee had purchased an immovable property at Rs.60,00,000/-. The assessee paid stamp duty value, on the valuation of the property at Rs.80,82,150/- as assessed by the DSR-II, South 24, Parganas, West Bengal on 17.02.2015. However, on the basis of the submission made by the assessee during the course of assessment proceeding u/s.143(3), the assessing officer considered the fair market value at Rs. 67,57,600/- as assessed by one Government Registered Valuer Shri Srbajit Dutta as on 10.02.2013. Accordingly, the Assessing Officer in the assessment order u/s 143(3) dated 18.12.2017 made the addition of the difference of valuation adopted by the Govt. registered valuer and the sale conveyance value as declared by the assessee at Rs. 7,57,6001- (67,57,600 - 60,00,000).*
>
> *3…….*
>
> *4. It transpires from record that the assessing officer had accepted the valuation report furnished by the assessee and thus violated the provision of section 56(2) of the I.T. Act, 1961. Hence, by considering the value of the property at Rs. 67,57,600/- as valued by the Govt. registered valuer instead of the valuation of the property at Rs.80,82,150/- as assessed by the State Government Authority the A O. has rendered the Assessment order erroneous. He should have applied his m nd and refer the valuation to DVO to reach a judicious and proper conclusion. It was, therefore, felt that the order passed by the A.O. was erroneous and prejudicial to th interest of the revenue. Thereafter, notice u/s. 263 was issued to the assessee on 12.11 2018."[Emphasis given by us]*

6. Here, we can notice that Ld. Pr. CIT has accepted the plea of the assessee in this regard that AO has acted upon the valuation of the flats made by Registered Valuer recognized by the Chief Commissioner of the Income Tax Department. However, the Ld. Pr. CIT was of the opinion that AO still erred in accepting the Registered Valuer's valuation report of flats at Rs.67,57,600/- when the stamp valuation authority has valued it at Rs.80,82,150/- and according to Ld. Pr. CIT, the AO ought to have referred the valuation to the Departmental Valuation Officer (*hereinafter referred to as* 'DVO') to reach a judicious and proper conclusion.

7. It is to be noted that even though the assessee contested the proposed action of the Ld. PCIT and submitted that section 56(2)(vii)(b)(ii) is not applicable, the Ld PCIT ignored the objection and being not satisfied with the submission of assessee, the Ld. PCIT passed the impugned order setting aside the order of the AO dated 18.12.2017 and directed the AO to call for valuation report from the competent authority as mandated u/s. 56(2) of the Act in

relation to the deed of sale agreement and conveyance. Aggrieved by the aforesaid impugned action of the Ld. PCIT, the assessee has raised the legal issue of jurisdiction while initiating revisional proceeding u/s. 263 of the Act itself.

8. On this legal issue, according to the assessee, the AO has made enquiry on this issue as is revealed from page no. 5 and 6 of AO's which is the SCN dated 08.12.2017 and the assessee's reply dated 12.12.2017 is kept at page 7 and 8 of the paper book. According to Ld. AR, the AO after having perusal of the registered valuer's report (*placed at pages 9 to 12 of paper book*) and the submission of the assessee made addition of Rs.7,57,600/- on this issue. According to Ld. AR, the Ld. Pr. CIT initially while issuing the SCN to initiate the revisional jurisdiction was on erroneous belief that the AO has depended on the estimate prepared by a private valuer to adopt the fair market value [FMV] of the flats at Rs.67,57,600/- while the stamp valuation authority valued it at Rs.80,82,150/-. To correct this misconception, the assessee brought to the notice of the Ld. Pr. CIT that the valuation report was not based on any private valuer but of an approved valuer recognized by the Chief Commissioner of the Income Tax Department, and the Ld. AR drew our attention to page no. 13 of PB i.e. the letter issued by the Chief Commissioner of Income Tax on 01.11.2011 to Shri Sarbajit Dat a (*Registered valuer in this case*) who had estimated the property in question where n th Department has given registration to him as valuer for the purpose of Wealth Tax Act, 1957. So, in such a factual back ground, according to Ld. AR, when the AO has enquired about the issue of valuation in respect of the flats in question and has taken into account the valuation made by the approved registered valuer, so, the Ld. PCIT's finding fault of no enquiry has no basis and, therefore, according to him, the assessment order passed by the AO cannot be termed as erroneous. Further, according to the Ld. AR, section 56(2)(vii)(b)(ii) has been enacted by the Finance Act, 2013 w.e.f 01.04.2014 and so is applicable to AY 2014-15 onwards and not in respect of the agreement of sale deed executed by the assessee as on 06.02.2013 (AY 2013-14) and, therefore, as per the law applicable for AY 2013-14 is concerned only Sec. 56(vii)(b)(i) of the Act is existing in force and this provision is not applicable in assessee's case because it is only applicable when an assessee receives an immovable property without any consideration. And since assessee agreed/and purchased the flat for Rs. 60 lakhs, question of applicability of section

56(2)(vii)(b)(i) also does not arise and the amendment brought in by Finance Act 2013 w.e.f. 01.04.2014 by inserting (ii) to sub clause (b) to sec. 56(2)(vii) of the Act is not applicable and Ld. Pr. CIT erred in taking aid of it and thus mis-directed himself to interfere with the assessment order passed by the AO. So, according to Ld. AR, AO's order cannot be held to be erroneous or prejudicial to the interest of revenue and so the Ld. Pr. CIT lacked jurisdiction to intervene in the order of AO.

9. Per contra, the Ld. CIT DR submitted that in the facts of this case, the AO ought to have referred the valuation to the DVO since the sale value of Rs.60,00,000/- for two flats was very much less than Rs.80,82,150/- which was the stamp duty value of the property in question. And the AO has simply accepted the valuation report submitted by the registered valuer and made addition of Rs.7,57,600/-. Therefore, according to the Ld. DR, the Ld. Pr. CIT has correctly invoked his power u/s. 263 of the Act and direct the AO to refer the matter to the DVO and thereafter to frame the assessment. Therefore, according to the Ld. DR, we should not interfere in the order of Ld. Pr CIT.

10. We have heard rival submissions and carefully perused the material available on record. We note that the assessee has raised the legal issue of jurisdiction of the Ld. Pr. CIT to interfere in the order of the AO. Before we advert to the facts and law involved in this *lis* before us, let us rev sit the law governing the legal issue before us. The assessee has challenged in the first place, the very usurpation of jurisdiction by Ld. Principal CIT to invoke his revisional powers enjoyed u/s 263 of the Act. Therefore, first we have to see whether the requisite jurisdiction necessary to assume revisional jurisdiction is existing in this case before the Pr. CIT rightfully exercised his revisional power. For that, we have to examine as to whether in the first place the order of the Assessing Officer found fault by the Principal CIT is erroneous as well as prejudicial to the interest of the Revenue. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following

circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii)Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him;[*because AO has to discharge dual role of an investigator as well as that of an adjudicator*]then in aforesaid any event the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e "*prejudicial to the interest of the revenue*'' has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **"unless the view taken by the Assessing Officer is unsustainable in law".**

11. In the light of the binding judicial precedent and well established principles, while we examine the legal issue as to whether the Ld. PCIT had made out a case as to invoke the revisional jurisdiction u/s 263 of the Act, we have to examine as to whether the Ld. PCIT's allegation against the AO's action/omission can be termed as erroeneous as well as prejudicial to the Revenue. For examining that we have to see the merit of the faults/omission on the part of the AO which according to Ld. PCIT makes the order of AO (order of AO) erroneous. The main fault raised by the Ld. PCIT is the omission on the part of AO not to refer the valuation of asset/flats to Departmental Valuation Officer (DVO) when there was difference in valuation of flats as claimed by the assessee at actual value of Rs. 60 Lakhs and his registered value estimating it at Rs. 67,57,600/- whereas the circle rate of flats as per the Stamp Valuation Authority was to the tune of Rs. 80,82,150/-. For that,

first we have to examine the legality of the AO accepting the valuation estimated by the registered valuer of the assessee, Shri Sarabjit Dutta at Rs. 67,57,600/- is legal or his omission to refer to DVO the valuation makes the action of AO an erroneous and prejudicial to Revenue. For that let us have a look at section 55A of the Act which empowers the AO to refer to DVO the fair market value of a capital asset in certain condition/situation which reads as under:

> "[**Reference to Valuation Officer.**
>
> **55A.** With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter[5], the [6] [Assessing] Officer may refer the valuation of capital asset to a Valuation Officer—
>
> (*a*) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the [7][Assessing] Officer is of opinion that the value so claimed is less than its fair market value ;
>
> (*b*) in any other case, if the [7][Assessing] Officer is of opinion—
>
> (*i*) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage[8] of the value of the asset as so claimed or by more than such amount[8] as may be prescribed in this behalf ; or
>
> (*ii*) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,
>
> and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (*ha*) and (*i*) of sub- ection (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, s ction 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the [Assessing] Officer under sub-section (1) of section 16A of that Act.
>
> *Explanation.*—In this section, "Valuation Officer" has the same meaning, as in clause (*r*) of section 2 of the Wealth tax Act, 1957 (27 of 1957).]"

Thus we note that section 55A of the Act as amended by the Finance Act, 2012 w.e.f. 01.07.2012 now provides that for ascertaining the fair market value of capital asset, the AO may refer the valuation of a capital asset to a valuation officer in a case where the value of the asset estimated by the registered value of the assessee in the opinion of the AO is at variance with its fair market value. So, it can be discerned that in order to ascertain the fair market value (*hereinafter the* FMV) of a capital asset, the AO may refer the valuation of capital asset to a valuation officer (*hereinafter the* DVO) when he is of the opinion that the value of the asset as claimed by the assessee as estimated by a registered valuer is at variance with its FMV. In other words, if the AO after perusal of the report/estimate of the registered valuer in respect of the asset is of the opinion that the value of the capital asset is not in variance with the market value of the asset, then the AO need not refer the valuation of capital asset to a DVO. Here in this case, we note that even though the assessee paid to

the vendor only Rs 60 lakhs for the flats as per agreement dated 06 Feb 2013, and since at the time of registration of the flats took place after two years i.e. on 17.02.2015, the valuation of the flats on which stamp duty was paid was at Rs 80,82,150/-. So when called upon by the AO during scrutiny assessment, the assessee contested the adoption of Circle Rate fixed by Stamp Valuation Authority at Rs 80,82,150/- and brought to the notice of AO the Fair Market Value (FMV) of the flats purchased by assessee was much less i.e, Rs 67,57,600/- and for that relied on the estimate prepared by Shri Sarbajit Datta who was holder of Registration Certificate as valuer issued by the Chief Commissioner of Income Tax for the purpose of Wealth Tax Act; and the AO after enquiry has agreed with the estimate prepared by the registered valuer at Rs.67,57,600/ , which is as per the law discussed (supra). At the cost of repetition, we note that Section 55A of the Act empowers the AO to refer the value of a capital asset to Department Valuation Officer (DVO) provided he is not satisfied with the FMV of the capital asset estimated by the registered valuer of the assessee. So, it can be seen that the AO has acted as per the section 55A of the Act and has exercised his discretion as empowered by the law, so it cannot be termed as erroneous. Further the AO's action of accepting the fair market value of the flats on the basis of the estimate prepared by the registered valuer of the assessee as per section 55A of the Act cannot be held to be perverse because it was based on material i.e. registered valuer's report. Therefore n the aforesaid facts the action of the AO cannot be held to be erroneous.

12. Coming to the next issue as to whether the amendment made by Finance Act, 2013 w.e.f. 01.04.2014 in section 56(2)(vii)(b) of the Act is applicable in this case. For that let us have a look at the pre-amended section i.e. before insertion of sub-clause (ii) to clause (b) of sub-section (vii) to section 56(2) of the Act which read as under –

> **"Income from other sources.**
>
> **56.** (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.
>
> (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—
>
> …….
>
> ……

> [(*vii*) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—
>
> (*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,—*
>
> *(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;"*

It is pertinent to note that Sub-clause (ii) (infra) was inserted to Clause (vii)(b) to Sub-section (2) of section 56 by the Finance Act, 2013 w.e.f. 01.04.2014 which reads 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:"*

13. According to the Ld. AR, sub-clause (ii) supra is not applicable in this case. For that his main contention is that the agreement for sale was made on 06 02.2013 (AY 2013-14) wherein the consideration of Rs.60,00,000/- was finalized for the flats. According to the Ld. AR, by registration dated 17.02.2015, the assessee has only completed the agreement made on 06.02.2013. According to the Ld. AR, the character of the sale transaction has not changed, therefore, the date of sale agreement dated 06.02.2013 should be taken and therefore sub-clause (ii) which was inserted to clause (vii)(b) to sub section (2) of section 56 by the Finance Act, 2013 w.e.f. 01.04.2014 would not apply and the Ld PCIT erred in assuming otherwise. We find force in the submission of Ld. AR. In this context, we need to see when the transfer of flats in question can be seen to have happened in the eyes of law. For that let us look at the definition of transfer in relation of capital asset is given in section 2(47) of the Act. We note that as per sub-clause (ii) of Section 2(47) of the Act, transfer in relation to a capital asset, includes the extinguishment of any rights therein. In Sanjeev Lal v. CIT [2014] 365 ITR 389/225 Taxman 239/46 taxmann.com 300 (SC), the Hon'ble Supreme Court considered the question as to whether the date on which the agreement for sale was executed could be considered the date on which the property was transferred. The Hon'ble Supreme Court held that when an agreement to sell in respect of immovable property is executed, a right in personam is created in favour of the vendee and when such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee gets a legitimate right to enforce a specific performance of the agreement. The Hon'ble Supreme Court, while considering the provisions of Section 2 (47) (ii) of the Act held that if a right in respect of

any capital asset is extinguished and that right is transferred to someone else, it would amount to transfer of a capital asset. The Hon'ble Supreme Court held that once an agreement to sell is executed in favour of some person, the said person gets a right to get the property transferred in his favour and, consequently, some right of the vendor is extinguished. Moreover, Explanation 2 to Section 2(47) of the Act which was added by Finance Act, 2012 with retrospective effect on 1.4.1962 clearly provides that transfer of an asset includes disposing of or parting with an asset by way of an agreement. Thus, we note that the process of sale is initiated from the date of sale agreement, the character of the transaction vis-à-vis Income Tax Act should be determined on the basis of the conditions that prevailed on the date of transaction was initially entered into and not on the date of conveyance deed executed, because by executing the conveyance deed, the assessee has only completed the contractual obligation imposed upon it by virtue of the sale agreement. Further, we note that by Finance Act 2013, w e.f. AY 01.04.2014, the Parliament has accepted the above principle for the purpose of computing deemed income on acquisition of immovable property u/s. 56(2)(vii) by inserting 1st proviso to section 56(2)(vii) which reads as under:

> *"Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable propert and the date of registration are not the same, the stamp duty valuer on the date of the agreement may be taken for the purposes of this sub-clause."*

14. From the aforesaid, it is apparently clear that the transfer of the property took place in the year 2013 when the provision of sub-clause (ii) in Section 56(2)(vii)(b) of the Act was not in existence. According to us, the Ld. PCIT was not justified in finding fault with the AO for not referring the valuation of the flats to the DVO by taking the aid of proviso to Section 56(2)(vii) which refers to case when it falls in sub-clause (b) of clause (vii) of sub-section (2) of Section 56 of the Act. Because, in this case when the assessee had agreed to purchase the flats on 06 Feb 2013, sub-clause (i) of clause (vii)(b) was also not applicable because, the assessee had purchased the flats for a consideration of Rs. 60 Lakhs whereas sub-clause (i) of Section 56(2)(vii)(b) is only attracted when the capital asset is received by an assessee who is an individual or HUF without any consideration. So the Ld. PCIT erred in law by referring to clause (b) of

Section 56(2)(vii)(b) to justify his finding that AO ought to have referred the valuation of flats to DVO, which impugned action of Ld PCIT cannot be countenanced.

15. Thus, from the aforesaid discussion since the date of agreement for sale of flats was on 15 Feb 2013, we find that the amendment brought in by Finance Act, 2013 w.e.f. 1.04.2014 by inserting sub-clause (ii) in section 56(2)(vii)(b) of the Act is not applicable in the case of the assessee. And as per the law as was applicable in the case of the assessee before the pre-amendment even sub- clause (i) in section 56(2)(vii)(b) is not applicable since assessee's case is not a case wherein no consideration was given for receiving the immovable property. And the AO as per section 55A of the Act since satisfied with the estimate prepared by the registered valuer of the assessee has adopted at Rs.67,57,600/- as the fair market value of the capital assets/flat as full value of consideration for the capital asset which action of the AO is his discretion which he has exercised as empowered by the statute. So it cannot be called as a wrong/erroneous order, whereas it is a plausible view. Therefore, the said action of AO to accept the estimated value of the flats at Rs. 67,57,600/- cannot be held to be erroneous. And even if the Ld. PCIT has a different view which may be a possible view that cannot be a ground to invoke the revisional jurisdiction u/s 263 of the Act unless the Ld. PCIT is able to show that the AO's view was unsustainable in law, which is not the case of the Ld PCIT. Without the jurisdictional facts and law existing in this case as discussed (supra), the Ld. Pr. CIT erred in usurping the revisional jurisdiction, so his impugned action is held to be without jurisdiction, therefore, we find that the Ld. Pr. CIT erroneously has usurped the jurisdiction u/s. 263 of the Act, so we are inclined to quash the same. Therefore, the assessee succeeds so, the appeal of assessee is allowed.

16. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 9th September, 2021.

Sd/-	Sd/-
(P. M .Jagtap)	(A. T. Varkey)
Vice-President	Judicial Member

Dated: 09.09.2021

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Monoj Kumar Biswas, 36, Middle Road, Ujjan Apts., 2nd floor, Kolkata-700 075.
2. Respondent – PCIT- 9, Kolkata
3. ITO, Ward-25(4), Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar/DDO
ITAT, Kolkata Benches, Kolkata