

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No. 3373/Mum/2019  
(Assessment Year: 2014-15)**

Yogesh Mavjibhai Gala  
401, Bhanu Kunj, 43,  
Swastik Society, N.S. Road No.3,  
Vile Parle (West),  
Mumbai – 400 056

Pr.Commissioner of Income  
Tax-25, 401/C-10, 4<sup>th</sup> Floor,  
Pratyaksha Bhavan, Bandra  
Vs. Kurla Complex, Bandra (East),  
Mumbai, Maharashtra 400 051

PAN – AACPG8057D

**(Appellant)**

**(Respondent)**

Appellant by: Shri K. Gopal &  
Ms. Neha Paranjpe, A,Rs  
Respondent by: Shri Anupama D.Shukla, D.R

Date of Hearing: 24.02.2020  
Date of Pronouncement: 28.02.2020

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax-25 (for short ‘Pr.CIT’) under Sec. 263 of the Income Tax Act, (for short ‘Act’), dated 29.03.2019 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The Ld. Commissioner of Income Tax erred in passing the order U/s263 of the Act, dated 29.03.2019 without appreciating the fact that the conditions precedent to invoke provisions of section 263 i.e. the assessment order is erroneous and prejudicial to the interest of the revenue are not satisfied. Thus, the order passed u/s.263 is bad in law and the same may be quashed.
2. The Ld. Commissioner of income Tax failed to appreciate that the original assessment order dated 21.12.2016 has been passed u/s143(3) by the Ld. A.O. after due application of mind and after carrying out proper verification with

respect to the issue involved in proceedings u/s 263. Thus, invocation of provisions of section 263 of the Act on the basis of change of opinion is not at all justified.

3. The Appellant seeks leave to add, alter and amend the above grounds whenever required.”

2. Original assessment in the case of the assessee was framed by the A.O, vide his order passed under Sec. 143(3) of Income Tax Act, 1961 (for short ‘Act’), dated 21.12.2016. Subsequently, the Pr. CIT issued a ‘Show cause’ notice (SCN) to the assessee therein calling upon him to explain as to why the assessment order passed by the A.O under Sec. 143(3), dated 21.12.2016 may not be revised under Sec. 263 of the Act.

3. As per the SCN, it was observed by the Pr. CIT that the assessee had during the year under consideration sold two flats i.e Flat Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No. 1, Oberoi Exquisite, Goregaon (East), Mumbai, vide two separate agreements dated 17/07/2013 (registered on 19/07/2013) and 21/05/2013 (registered on 24/05/2013), for a consideration of Rs. 3,50,00,000/- and Rs. 3,20,16,626/- for each flat, respectively. On a perusal of the records, it was observed by the Pr. CIT that a letter of allotment in respect of the aforesaid property was issued to the assessee on 20/02/2010 by the builder i.e M/s Oberoi Realty Limited. However, the assessee had executed the ‘agreements’ for purchase of the aforesaid flats i.e Flat Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No.1, Oberoi Exquisite, Goregaon (East), Mumbai, vide two separate agreements dated 05/07/2003 (registered on 08/07/2013) and 04/05/2013 (registered on 08/05/2013) for a consideration of Rs. 1,83,26,600/- for each flat, respectively. Against the sale of the aforesaid flats the assessee had purchased a new residential property viz. Flat Nos. 1204 & 1205, Omkar Alta Monte, Kurar Village, Western Express Highway, Malad (East), Mumbai, vide two separate agreements dated 05/12/2014 (registered on 05/12/2014) and 05/12/2014 (registered on 05/12/2014) for a consideration of Rs. 2,47,11,844/- and 2,44,33,219/-, respectively. As regards the aforesaid new property, it was noticed by the Pr. CIT that both the purchase agreements were in joint names of the assessee and his wife Smt. Neena Yogesh Gala, and his two sons (one son in each

agreement). As per the computation of income filed by the assessee, it was observed by the Pr. CIT that the assessee had reckoned the period of holding of the property that was sold by him i.e Flat Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No. 1, Oberoi Exquisite, Goregaon (East), Mumbai, on the basis of the allotment letter dated 20/02/2010 that was issued by the builder i.e M/s Oberoi Realty Limited., and thus treating the same as a long term capital asset, had in his revised return of income that was filed by him on 24/12/2014 had raised a claim for deduction under Sec. 54 of Rs. 1,50,05,125/-. Adverting to the assessee's claim of deduction under Sec. 54 of the Act, it was observed by the Pr.CIT that the 'agreement' of purchase for the aforesaid property i.e Flat Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No. 1, Oberoi Exquisite, Goregaon (East), Mumbai was executed only on 05/07/2003 (registered on 08/07/2013) and 04/05/2013 (registered on 08/05/2013). It was further noticed by him that the allotment letter that was issued to the assessee by the builder i.e M/s Oberoi Realty Limited, did not vest any right to acquire the property with the assessee, and only created an interest to acquire the same on the terms and conditions as would be laid down in the 'agreement' to purchase. Also, it was observed by the Pr. CIT that the assessee had sold the Flat Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No. 1, Oberoi Exquisite, Goregaon (East), Mumbai, vide registered 'agreements' dated 08.07.2013 and 19.07.2013, respectively, while they were still under construction. Observing, that the property sold by the assessee was still under construction and possession of the same was yet not handed over to him till the date of their sale, the Pr. CIT held a conviction that the same could not be treated as a long term capital asset under Sec.54/54F of the Act. It was further observed by the Pr. CIT, that as the assessee had neither received the possession of the aforesaid flats i.e Flat Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No. 1, Oberoi Exquisite, Goregaon (East), Mumbai, which were under construction, nor used the same for his residence for a period of 3 years, therefore, on the said count also he was not eligible for claim of deduction under Sec. 54 of the Act. Lastly, it was observed by the Pr. CIT that the claim of deduction under Sec. 54 for two residential properties that was raised by the assessee was contrary to the provisions of the

aforesaid statutory provision. On the basis of the aforesaid facts, the Pr. CIT being of the view that the A.O had failed to make necessary verifications as regards the entitlement of the assessee for claim of deduction under Sec. 54 of the Act, therein called upon the assessee to explain as to why the assessment order passed under Sec. 143(3), dated 21.12.2016 may not be revised.

4. After necessary deliberations on the reply filed by the assessee, the Pr. CIT did not find favour with his claim for deduction under Sec. 54 of the Act. Observing, that the assessee had sold a residential house which was under construction, the Pr. CIT was of the view that he would not be entitled for claim of deduction under Sec. 54 of the Act. On the basis of his aforesaid observations, the Pr. CIT being of the view that the order passed by the A.O under Sec. 143(3), dated 21.12.2016 was erroneous and prejudicial to the interest of the revenue, therefore, directed the A.O to decide the issue afresh after making necessary verifications in view of the directions given in the revisional order.

5. The assessee being aggrieved with the order passed by the Pr. CIT under Sec. 263 of the Act, has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case. It was submitted by the Id. A.R that the A.O while framing the assessment had raised specific queries as regards the entitlement of the assessee towards claim of deduction under Sec. 54 of the Act, and had only after necessary deliberations concluded that the said claim was in order. In order to drive home his aforesaid claim, the Id. A.R took us through a letter dated 20.05.2016 that was filed by the assessee in reply to certain queries which were raised by the A.O, vide his notice issued to the assessee under Sec. 142(1), dated 13.06.2016. Adverting to the aforesaid reply, the Id. A.R submitted that the assessee in the course of the assessment proceedings had divulged at length the details as regards the purchase of the Flat Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No.1, Oberoi Exquisite, Goregaon (East), Mumbai. It was submitted by the Id. A.R, that the assessee while substantiating his claim for deduction under Sec. 54 of the Act, had brought to the notice of the A.O that he had booked the Flat Nos. 705 & 706, 7<sup>th</sup> Floor,

Tower-B, Building No. 1, Oberoi Exquisite, Goregaon (East), Mumbai, way back in the financial year 2009-10, and had thereafter paid the purchase consideration over the years. In fact, it was submitted by the Id. A.R that complete details of the payments towards purchase consideration of the aforesaid flats was duly reflected in the computation of income that was filed by the assessee along with his return of income. The Id. A.R also drew our attention to the reply dated 28.06.2016 [Page 5 of the assessee's 'Paper book' (APB)] that was filed with the A.O. It was submitted by the Id. A.R that the assessee vide his said reply had filed with the A.O a copies of the 'allotment letters' for the Flat Nos.705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No. 1, Oberoi Exquisite, Goregaon (East), Mumbai, both dated 20.02.2010. Also, the copies of the 'agreements for purchase' of the aforesaid flats dated 05.07.2013 (registered on 08.07.2013) and 04.05.2013 (registered on 08.05.2013) were furnished in the course of the assessment proceedings with the AO. On the basis of the aforesaid facts, it was submitted by the Id. A.R that the A.O while framing the assessment had raised specific queries and deliberated at length as regards the entitlement of the assessee towards claim of deduction under Sec. 54 of the Act. As such, it was submitted by the Id. A.R that now when the claim of the assessee for deduction under Sec. 54 of the Act had been vetted by the A.O, and only pursuant thereto accepted, therefore, the Pr. CIT was divested of his jurisdiction to sit in review and dislodge the well reasoned view taken by the A.O. In order to fortify his claim that all the requisite details as regards the aforesaid Flats Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No.1, Oberoi Exquisite, Goregaon (East), Mumbai, were furnished with the A.O in the course of the assessment proceedings, the Id. A.R took us through a letter dated 07.07.2016 that was filed by the assessee with the A.O (Page 15) of APB. It was averred by the Id. A.R, that the assessee had even placed on record the copy of the receipts of the payment of the instalments towards purchase consideration for the aforesaid Flats Nos. 705 & 706, 7<sup>th</sup> Floor, Tower-B, Building No.1, Oberoi Exquisite, Goregaon (East), Mumbai, with the A.O. Also, the Id. A.R took us through a letter dated 02.11.2016 that was filed by the assessee with the A.O (Page 20 of APB), wherein the fact that the payments made by the assessee towards purchase

consideration over the years i.e since 2009-10 were dully reflected in the 'balance sheets' for the said years was duly brought to the notice of the A.O. In the backdrop of his aforesaid contentions, it was submitted by the Id. A.R, that now when the A.O while framing the assessment had raised specific queries as regards the assessee's claim for deduction under Sec. 54, and was provided with complete details as regards the mode and manner of acquisition of the aforesaid property over the years since F.Y 2009-10, therefore, it could safely be concluded that the A.O while allowing assessee's claim for deduction under Sec.54 had applied his mind and had arrived at a plausible view that the assessee claim for deduction was in order. In order to buttress his claim that for invoking Sec. 263, the order passed by the A.O has to be both erroneous and prejudicial to the interest of the revenue, the Id. A.R relied on the judgment of the Hon'ble Supreme Court in the case of Malabar Industrial Company Limited Vs. CIT (2000) 243 ITR 83 (SC). Also, in support of his claim that where two views existed in respect of an issue, and the A.O had taken one of the plausible view, then the CIT was precluded from exercising his revisional jurisdiction under Sec. 263 of the Act, reliance was placed by the Id. A.R on the judgment of the Hon'ble Supreme Court in the case of CIT (Central), Ludhiana Vs. Max India Ltd. (2007) 295 ITR 282 (SC). Also, in order to support his claim that no infirmity did arise from the allowing of the assessee's claim for deduction under Sec. 54 of the Act, the Id. A.R relied on the order of the ITAT, Mumbai 'D' bench in the case of Richa Bagrodia Vs. DCIT-12(3), Mumbai (2019) 175 ITD 552 (Mum) and ITAT, Mumbai 'F' Bench, Mumbai in the case of ACIT vs. Smt. Vandanarama Roi (ITA No. 6173/Mum/2011), dated 07.11.2012. It was submitted by the Id. A.R, that in the aforesaid orders the Tribunal had concluded that in case of sale of flat it is the date of allotment of flat and not the date of handing over of possession of the flat which has to be considered for computing the holding period of 36 months. Accordingly, it was the claim of the Id. A.R that not only the Pr. CIT had exceeded his jurisdiction and revised the order under Sec. 263 of the Act, but also, the aforesaid claim of deduction raised by the assessee under Sec. 54 was duly supported by the orders of the jurisdictional Tribunal in the aforesaid cases. It was submitted by the Id. A.R that the order passed by the Pr. CIT

under Sec. 263 for the aforesaid reasons could not be sustained and was liable to be vacated.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the order passed by the Pr. CIT under Sec. 263 of the Act. It was submitted by the Id. D.R that the Pr. CIT remaining well within the arena of his jurisdiction had validly passed the order under Sec. 263 of the Act. Apart from that, it was submitted by the Id. D.R that as the A.O had failed to make necessary verifications as regards the entitlement of the assessee for deduction under Sec. 54 of the Act, therefore, the Pr. CIT observing that the assessment order passed by him was found to be erroneous insofar it was prejudicial to the interest of the revenue, had thus validly revised the same in exercise of his revisional jurisdiction.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As observed by us hereinabove, the Pr.CIT held a conviction that the assessee had become the owner of the aforesaid property viz. flat No. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (E), Mumbai, only on the basis of the respective 'agreements for purchase' i.e dated 05.07.2013 (registered on 08.07.2013) and dated 04.05.2013 (registered on 08.05.2013). On the basis of his aforesaid observation, the Pr. CIT was of the view that the claim of the assessee of being the 'owner' of the aforesaid property on the basis of the letter of allotment, dated 20.02.2010 was absolutely incorrect. In fact, the Pr. CIT was of the view that the letter of allotment, dated 20.02.2010 did not vest any right with the assessee to acquire the aforesaid property, but only created an interest to acquire the same, and that too as per the terms and conditions as would be laid down in the 'agreement to purchase' the said property. In order to drive home his aforesaid view, it was observed by the Pr. CIT that the letter of allotment, dated 20.02.2010 merely mentioned the allotment of a particular property without specifying any details of obligations upon fulfilment of which the property was to be acquired and also the rights in lieu of the same. Apart from that, the

Pr. CIT in order to buttress her claim that the assessee on the basis of the letter of allotment, dated 20.02.2010 was not vested with the rights as that of an 'owner' of the aforesaid property, had therein referred to certain facts as were discernible from the letter of allotment viz. (i) that, the builder had the right to terminate the allotment at its sole discretion; (ii) that, neither the assessee was entitled to occupy nor the builder was liable to hand over the occupation of the property unless and until the assessee had made all the payments in accordance with the allotment letter; (iii) that, the assessee had agreed with the builder that he would not sell, transfer, deal with or otherwise dispose off in any manner whatsoever, the aforesaid property until 04.11.2011; (iv) that, in the event of any sale/transfer of the aforesaid premises after the scheduled date, the assessee shall register the agreement to be executed with the builder under the provisions of the Maharashtra Ownership Flats (Regulation of the promotion of Construction, Sale, Management and Transfer Act, 1963) prior to the sale/transfer of the said property; and (v) that, in the event of any sale/transfer of the aforesaid property after 04.11.2011 by the assessee, the builder would be entitled to the right of first refusal in respect of the same. Accordingly, the Pr. CIT held a conviction that the assessee on the basis of the letter of allotment was not vested with any right to sell the property on his own, for the reason, that he was not the owner of the same. Also, it was observed by the Pr. CIT that in the absence of a registered agreement no right to acquire the property was also vested with the assessee in the year of allotment. As such, the Pr. CIT was of the view that as the assessee was not vested with any right to acquire the property on the basis of the letter of allotment, dated 20.02.2010, therefore, his claim of LTCG was absolutely misconceived. In sum and substance, the Pr. CIT was of the view that as the 'agreement to purchase' was registered only during the year under consideration i.e A.Y. 2014-15, therefore, the right to acquire the property got vested with the assessee only in the current year and not in the year 2010, as was claimed by him. On the basis of support drawn from the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Kalpana Hansaraj (2019) 261 Taxman 294 (Bombay), the Pr. CIT was of the

view that as the assessee had not transferred a residential house, therefore, it was not entitled for claim of deduction under Sec. 54 of the Act.

8. As is discernible from the order passed by the Pr. CIT under Sec. 263 of the Act, the assessee was held to be not eligible for claim of deduction under Sec. 54 of the Act, for the reason, viz. (i). that, the ownership of the property viz. Flat No. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (East), Mumbai, got vested with the assessee only on the basis of the respective 'agreements for purchase' i.e dated 05.07.2013 (registered on 08.07.2013) and dated 04.05.2013 (registered on 08.05.2013), and not on the basis of the allotment letter, dated 20.02.2010 that was issued to him by the builder i.e M/s Oberoi Realty Limited.; and (ii). that, the assessee had not yet obtained the "Occupancy Certificate" (OC) from the competent authority for the aforesaid property viz, Flat Nos. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (East), Mumbai, and the construction of the same was not yet completed, therefore, the house sold not being in a habitable condition was thus not eligible for deduction under Sec. 54 of the Act.

9. We have deliberated at length on the observations of the Pr. CIT and are unable to find ourselves to be in agreement with the same. Insofar the observation of the Pr. CIT that the aforesaid property viz. Flat Nos. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (E), Mumbai, were yet not complete at the time of their sale is concerned, the same does not find favour with us. On a perusal of the records, we find that the assessee had filed a 'Completion certificate', dated 12/01/2011 issued by the Architects, wherein they had stated that the 7<sup>th</sup> Floor Slab had been completed. Apart from that, the assessee had filed with the A.O the copies of the 'agreements to purchase' i.e dated 05.07.2013 (registered on 08.07.2013) and dated 04.05.2013 (registered on 08.05.2013), AND 'agreements to sell' i.e dated 17/07/2013 (registered on 19/07/2013) and 21/05/2013 (registered on 24/05/2013) of the aforesaid property viz. Flat Nos. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (E), Mumbai, which clearly referred to purchase and sale of the residential flats. Accordingly, finding no basis to agree with the view taken by the Pr.CIT that the residential flats sold by the assessee were not in a

habitable condition, therefore, the assessee was disentitled for claim of deduction under Sec. 54 of the Act, we reject the same.

10. We shall now advert to the observation of the Pr. CIT that as the ownership of the property viz. Flat No. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (East), Mumbai, got vested with the assessee only on the basis of the respective 'agreements for purchase' i.e dated 05.07.2013 (registered on 08.07.2013) and dated 04.05.2013 (registered on 08.05.2013), and not on the basis of the allotment letter, dated 20.02.2010 that was issued to him by the builder i.e M/s Oberoi Realty Limited, therefore, the same not being a long term capital asset, was not eligible for deduction under Sec. 54 of the Act. As observed by us hereinabove, the assessee had calculated the period of holding of the aforesaid property on the basis of the allotment letter, dated 20.02.2010 that was issued to him by the builder i.e M/s Oberoi Realty Limited, which claim of the assessee was accepted by the A.O while framing the assessment. On the contrary, the Pr. CIT was of the view that as the assessee got vested with the ownership of the property viz. Flat No. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (East), Mumbai, only on the basis of the respective 'agreements for purchase' i.e dated 05.07.2013 (registered on 08.07.2013) and dated 04.05.2013 (registered on 08.05.2013), and not on the basis of the allotment letter, dated 20.02.2010, therefore, the period of holding was to be calculated on the basis of the said 'agreements to sell' executed by the assessee during the year under consideration itself. Accordingly, the Pr. CIT holding the view taken by the A.O as erroneous insofar it was prejudicial to the interest of the revenue, had thus, in exercise of his revisional jurisdiction under Sec. 263 of the Act, therein 'set aside' the assessment order passed by him under Sec. 143(3), dated 21.12.2016.

11. We have deliberated at length on the aforesaid view taken by the Pr. CIT, and are of the considered view that the same could not have formed the basis for exercise of revisional jurisdiction by the Pr. CIT under Sec. 263 of the Act. As per the records to which our attention was drawn by the Id. A.R in the course of the hearing of the appeal,

we find that the A.O while framing the assessment had raised specific queries as regards the entitlement of the assessee towards claim of deduction under Sec. 54 of the Act. For instance, the A.O vide his letter dated 28.10.2016 [Page 17 of 'APB'] had called upon the assessee to substantiate his claim for deduction under Sec. 54 of the Act, in the backdrop of the fact that both the purchase and sale of the property had taken place during the year under consideration itself i.e A.Y 2014-15. It was queried by the A.O, as under (relevant extract of the query letter) :

“During the year under consideration you have sold two residential flats i.e flat No. 705 and 706 in Oberoi Exquisite. You have also worked out Long term capital gain (LTCG) and claimed exemption under section 54 of the I.T Act. In this respect you are requested to please explain/file details :

- (i). Gain arisen is LTCG especially with reference to the fact that the purchase is 8.7.2013 for flat No. 705 and 08.05.2013 for flat No. 706 and sale date is 19.7.2013 for flat No. 705 and 8.07.2013 for flat No. 706 both falling in the previous year relevant to this assessment year.
- (ii). Substantiate our claim for exemption under section 54 of the I.T Act with relevant supporting fulfilling the conditions for claim of exemption.”

In compliance to the aforesaid query so raised by the A.O, the assessee had vide his reply dated 02/11/2016 [Page 20 of 'APB'] submitted before him that he had booked the aforesaid flats in February, 2010. Accordingly, the assessee substantiating his claim for deduction under Sec. 54 of the Act, had furnished with the A.O the complete details as regards the mode and manner of acquisition of the property under consideration i.e Flat Nos. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (East), Mumbai, on the basis of the allotment letter, that was issued to him by the builder i.e M/s Oberoi Realty Limited on 20.02.2010. Also, documents supporting the aforesaid fact were also furnished alongwith the reply with the A.O y viz. (i). copies of the allotment letters; (ii). copies of the receipts issued by the builder i.e M/s Oberoi Realty Limited for the payments which were made by the assessee towards purchase consideration (in instalments) of the aforesaid property; and (iii). copy of the bank account of the assessee evidencing the making of the aforesaid payments by the assessee to the builder over the years. We find that the A.O after raising specific queries as regards the basis for treating the aforesaid property as a long term capital asset, and claiming of deduction under Sec. 54 of the Act by the assessee, had only after necessary deliberations accepted the claim of the assessee.

Accordingly, we are of a strong conviction that the A.O only after making necessary verifications as regards the entitlement of the assessee towards claim of deduction under Sec. 54 of the Act, had accepted the same. As such, the observation of the Pr. CIT in the 'SCN', dated 23/03/2018 that the A.O had failed to make enquiries regarding the purchase and sale of the properties is misconceived, and is liable to be rejected.

12. We shall now advert to the issue that as to whether or not the A.O had taken one of the possible view as regards the entitlement of the assessee for claim of deduction under Sec. 54 of the Act. At this stage, we may herein observe that the view taken by the A.O that the date of allotment of the flats i.e 20/02/2010 was to be taken as the basis for calculating the period of the holding by the assessee, on the date of framing of the assessment was supported by the order of the jurisdictional Tribunal i.e ITAT, Mumbai Bench 'F', Mumbai in ACIT, 18(3), Mumbai Vs. Smt. Vandana Rana Roy [ITA No. 6173/Mum/2011, dated 07/11/2012]. In the said case, the Tribunal had observed that the "date of allotment" was to be reckoned as the date for computing the holding period for the purpose of capital gains. Also, in the case of Richa Bagrodia Vs. Dy. CIT [2019] 175 ITD 552 (Mum), the jurisdictional Tribunal has held that in case of sale of flat it is the date of allotment of the flat and not the date of giving of possession of flat which has to be considered for computing the holding period of 36 months. We further find that the Hon'ble High Court of Punjab & Haryana in the case of Madhu Kaul Vs. CIT & Anr. [2014] 363 ITR 54 (P&H), has also held that the mere fact that possession of the flat was delivered later, does not detract from the fact that the allottee was conferred a right to hold property on issuance of an allotment letter. It was further observed, that payment of balance instalments, identification of a particular flat and delivery of possession are consequential acts that relate back to and arise from rights conferred by allotment letter. On the basis of our aforesaid observations, we are of a strong conviction that the view taken by the A.O that the period of holding of the aforesaid property viz. Flat Nos. 705 & 706, 7<sup>th</sup> Floor, at Oberoi Exquisite, Goregaon (East), Mumbai, was to be calculated on the basis of the allotment letter that was issued to the assessee by the builder i.e M/s

Oberoi Realty Limited on 20.02.2010, can safely be held to be a possible and a plausible view that was found to be in conformity with the view taken by the jurisdictional Tribunal and also that of the non-jurisdictional High Court, on the date on which the assessment was framed by him. Accordingly, we are of the considered view, that the aforesaid conscious and a possible view arrived at by the A.O, could not have been dislodged by the Pr. CIT in exercise of her revisional jurisdiction under Sec. 263 of the Act. On the basis of our aforesaid deliberations we 'set aside' the order passed by the Pr. CIT under Sec. 263 of the Act, dated 29/03/2019, and restore the assessment order passed by the A.O under Sec. 143(3), dated 21/12/2016. The **Grounds of appeal No. 1 to 3** raised by the assessee are allowed in terms of our aforesaid observations.

13. Resultantly, the appeal filed by the assessee is allowed.

Sd/-  
(G. Manjunatha)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Place : Mumbai

Dated: 28/02/2020

Rohit, P.S.

**Copy of the Order forwarded to :**

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

BY ORDER,  
//True Copy//  
(Sr. Private Secretary)  
**ITAT, Mumbai.**