

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA****Before Shri P.M. Jagtap, Accountant Member****I.T.A. No. 2285/KOL./2017
Assessment Year : 2014-2015*****Sri Anup Kumar Chakravarti,.....Appellant***
2/23, Einstein Avenue,
P.O. Durgapur,
Pin Code No. 713 205
[PAN: ABYPC 7999 K]***-Vs.-******Assistant Commissioner of Income Tax,.....Respondent***
Circle-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**Appearances by:*****Shri H.V. Bhardwaj, FCA, for the appellant******Shri Sanjay Mukherjee, Additional CIT, D.R., for the respondent***

Date of concluding the hearing : January 29, 2018

Date of pronouncing the order : January 31, 2018

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-22 Kolkata dated 24.03.2017 and the solitary issue raised therein relates to the addition of Rs.14,62,510/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on the basis of stamp duty valuation of property on the date of Conveyance Deed.

2. The assessee in the present case is an individual, who was a non-resident during the year under consideration. The return of income for the said year was filed by him on 26.03.2015 declaring total income of Rs.5,35,080/-. The assessee had purchased a property for a consideration of Rs.30,19,030/- for which the Deed of Conveyance was executed on 07.11.2013. In this regard, it was noted by the Assessing Officer that the fair market value of the said property was assessed by the Registering

Authority at Rs.44,81,540/- for the stamp duty purpose. He, therefore, invoked section 56(2)(vii)(b) of the Act and added the difference of Rs.14,62,510/- (Rs.44,81,540/- minus Rs.30,19,030/-) to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 09.12.2016.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) disputing the addition of Rs.14,62,510/- made by the Assessing Officer on the basis of stamp duty valuation made by the Registering Authority as on the date of Conveyance Deed. During the course of appellate proceedings before the Id. CIT(Appeals), it was submitted by the assessee that the agreement for purchase of the property, i.e. residential flat had been entered into on 12.02.2010 itself and the reference to the said agreement was clearly made in the Deed of Conveyance executed on 07.11.2013. It was also submitted on behalf of the assessee before the Id. CIT(Appeals) that the sum of Rs.1,00,000/- was paid to the builder against the purchase of the said property by cheque on 15.10.2009 and a further sum of Rs.3,52,855/- was also paid by cheque on the date of execution of agreement, i.e. 12.02.2010. Reliance in this regard was placed by the assessee on the 1st and 2nd proviso to section 56(2)(vii)(b) to contend that the stamp duty value on the date of agreement for purchase must be taken and not the stamp duty value on the date of the registration of Deed of Conveyance. The Id. CIT(Appeals) did not accept this contention of the assessee by observing that it was unsupported and unconvincing. He also observed that no documents had been submitted by the assessee before the Assessing Officer nor any specific argument was raised during the course of assessment proceedings by relying on the 1st and 2nd proviso to section 56(2)(vii)(b). He accordingly proceeded to confirm the addition made by the Assessing Officer on this issue. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The ld. counsel for the assessee has reiterated before the Tribunal the contention raised on behalf of the assessee before the ld. CIT(Appeals) by relying on the 1st and 2nd proviso to section 56(2)(vii)(b) that the amount of consideration for the transfer of immovable property having been fixed by the agreement executed on 12.02.2010 and the part of such consideration having been paid by the assessee by cheque before the date of the said agreement, the stamp duty value on the date of the said agreement must be taken for the purpose of section 56(2)(vii)(b) and not the stamp duty value as on the date of the registration of Conveyance Deed. In support of this contention, he has also filed the copy of agreement dated 12.02.2010 and pointed out that the reference to the said agreement was made even in the date of Conveyance Deed executed on 06.11.2013. He, however, has agreed that the copy of agreement dated 12.02.2010 was not produced before the Assessing Officer as the same was never specifically asked for by him. As rightly pointed out by the ld. D.R. from the relevant portion of the assessment order, specific opportunity in this regard was given by the Assessing Officer to the assessee to offer his explanation on the issue of applicability of section 56(2)(vii)(b), but the Authorized Representative of the assessee did not raise any objection to the addition of Rs.14,62,510/- proposed to be made by the Assessing Officer on the basis of stamp duty valuation of the property as on the date of Conveyance Deed. Moreover, the fact that there was such an agreement executed on 12.02.2010 and reference to the said agreement was made in the Deed of Conveyance was also not brought to the notice of the Assessing Officer by the assessee. Even the relevant aspect of part payment having been made by the assessee against the consideration so agreed by the agreement dated 12.02.2010 well before the execution of the said agreement was also not brought to the notice of the Assessing Officer. Keeping in view all these facts of the case, I find merit in the contention raised by the ld. D.R. that the claim of the assessee made on the basis of 1st and 2nd proviso to section 56(2)(vii)(b) requires verification by the Assessing Officer. The

impugned order of the Id. CIT(Appeals) on this issue is accordingly set aside and the matter is restored to the file of the Assessing Officer for deciding the same afresh after verifying the claim of the assessee based on the 1st and 2nd proviso to section 56(2)(vii)(b) from the relevant documentary evidence.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 31st day of January, 2018.

**Sd/-
(P.M. Jagtap)
Accountant Member
Kolkata, the 31st day of January, 2018**

- Copies to :*
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 - (3) **Commissioner of Income Tax(Appeals)-22, Kolkata;**
 - (4) **Commissioner of Income Tax- ,**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

*Senior Private Secretary,
Head of Office/DDO,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.