

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri P.M. Jagtap, Hon'ble Accountant Member]**

**I.T.A. No. 1943/Kol/2017
Assessment Year: 2014-15**

Umesh Prasad Shaw.....**Appellant**
C/o. D.J. Shaw & Co
Kalyan Bhawan
2, Elgin Road
Kolkata - 700 020
[PAN : ADYPS 6806 M]

I.T.O. Ward-48(3), Kolkata..... **Respondent**
Kolkata

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the assessee.

Shri S.M. Tauheed, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 12th, 2017

Date of pronouncing the order : February 23rd, 2018

O R D E R

Per P.M. Jagtap :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-14, Kolkata dt. 30/06/2017 (hereinafter the 'Id. CIT (A)') passed u/s 250 of the Income Tax Act, 1961 (the 'Act') and the solitary issue involved therein relates to the addition of Rs. 17,96,260/- made by the AO and confirmed by the Ld. CIT(A) u/s 56(2)(vii)(b)(ii) of the Act.

2. The assessee in the present case is an individual who filed his return of income for the year under consideration on 08/12/2014 declaring a total income of Rs. 2,68,540/-. As per the information received by the AO, the assessee had purchased a flat for a total consideration of Rs. 20,00,000/- during the year under consideration and the registration of the same was done on 12/02/2014. As per the valuation made for the purpose of stamp duty, the value of the said property as on 12/02/2014 was determined at Rs. 37,96,260/-. As found by the assessing officer, the assessee had also paid stamp duty on the value so determined for the purpose of stamp duty. Since the difference of Rs. 17,71,960/- in the said value and the sale consideration shown by the assessee was liable to be taxed as per the provisions of Section 56(2)(vii)(b)(ii) of the Act. The assessee during the course of assessment proceedings was called upon by the AO to offer his explanation in the

matter. The explanation offered by the assessee in this regard was not found acceptable by the AO and he proceeded to make an addition of Rs. 17,96,260/- to the total income of the assessee under the head "income from house property" in the assessment completed under Section 143(3) vide an order dated 20/09/2016. On appeal, the Id. CIT(A), confirmed the said addition. Aggrieved by the order of the Id. CIT(A), the assessee has preferred the appeal before the Tribunal.

3. I have heard the arguments of both the sides and also preferred the relevant material available on record. The Id. Counsel for the assessee contended that the assessing officer before making the impugned addition u/s 56(2)(vii)(b)(ii) of the Act, on the basis of stamp duty valuation, should have made a reference to the valuation officer for determining the Fair Market Value of the property as per the 1st proviso to section 56(2)(vii)(b)(ii) of the Act. The Id. D/R, on the other hand, has contended that the said proviso can be invoked only when the stamp duty value is disputed by the assessee on the specific grounds and since no such dispute was specifically raised by the assessee during the course of assessment proceedings, the AO was not required to make a reference to the DVO. It is, however, observed that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Calcutta High Court in the case of *Sunil Kumar Agarwal vs. CIT*, 372 ITR 83, cited by the Id. Counsel for the assessee, wherein a similar issue has been decided by the Honourable jurisdictional High Court in the context of Section 50C of the Act, by observing as under: –

"For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law."

4. In my opinion, the ratio of the decision of the Hon'ble Calcutta High Court in the case of *Sunil Kumar Agarwal (supra)*, is squarely applicable even in the context of the provisions of Section 56(2)(vii)(b)(ii) of the Act, the relevant provisions of which are analogous to the provisions of Section 50C. I, therefore, respectfully follow the said the decision and restore the matter to the file of the AO for deciding the same afresh after referring the issue of determination of the Fair Market Value of the assessee's property as on 12/02/2014 to the Departmental Valuation Officer.

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

Kolkata, the 23rd day of February, 2018.

Sd/-

[P.M. Jagtap]

Accountant Member

Dated :23.02.2018

{SC SPS}

Copy of the order forwarded to:

1. Umesh Prasad Shaw

C/o. D.J. Shaw & Co

Kalyan Bhawan

2, Elgin Road

Kolkata - 700 020

2. I.T.O. Ward-48(3), Kolkata

Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches