

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA**  
(समक्ष)Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)  
[Before Shri A. T. Varkey, JM & Shri M.Balaganesh, AM]

**I.T.A. No. 1483/Kol/2017**  
**Assessment Years: 2013-14**

Income-tax Officer, Wd-31(4), Kolkata.	Vs.	Smt. Sancheta Adhikary (PAN: AEZPA9067J)
Appellant		Respondent

Date of Hearing	21.06.2018
Date of Pronouncement	29.06.2018
For the Appellant	Shri A. Bhattacharjee, Addl. CIT
For the Respondent	Shri M. D. Shah, AR

**ORDER**

**Per Shri A.T.Varkey, JM**

This appeal preferred by the Revenue is against the order of the Ld. CIT(A)-9, Kolkata dated 31.03.2017 for assessment year 2013-14 .

2. The sole issue involved in this appeal of revenue is against the action of Ld. CIT(A) in deleting the addition of Rs.1,69,81,700/- made by the AO u/s. 56(2)(vii)(b) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) in the assessment year under consideration.

3. Briefly stated facts are that in the instant case the assessee has filed her return of income on 04.04.2014 showing total income of Rs.5,15,770/-. Later the case was selected for scrutiny through CASS and notice u/s. 143(2) of the Act was issued on 03.09.2015 and served on the assessee. Subsequently, notice u/s. 142(1) was also issued on 03.09.2015. During the course of assessment proceedings, the AO observed that the assessee purchased a flat of super built up area of 2800 sq. ft. along with 135 sq. ft. garage from M/s. Eureka Mercantiles Pvt. Ltd. by a deed of conveyance dated 28.03.2013. The assessee claimed to

have purchased the said flat for a consideration of Rs.30,00,000/-. As per the assessee, the said flat was purchased on credit and thus the sale consideration was paid by a book entry of credit by the seller company and the seller company duly recorded the consideration of Rs. 30 lakhs in its books of accounts and reflected the assessee as a debtor. However, the AO took the view that the flat was purchased without consideration and hence, the fair market value of the flat i.e. Rs.1,69,81,700/- as determined by the Stamp Valuation Authority was to be assessed as income from other sources as per section 56(2)(vii)(b) of the Act and accordingly, the AO added the sum of Rs.1,69,81,800/- as income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A). Before the First Appellate Authority, the assessee submitted that the AO has erred in making the addition on the ground that the property was acquired without consideration. It was urged by the assessee before the Ld. CIT(A) that as per the conveyance deed, the sale was for a consideration of Rs. 30,00,000/- hence, in such a scenario, the provisions of section 56(2)(vii)(b) of the Act had no application since it applies to cases where there is no consideration and, that the entire sale consideration was paid by account payee cheque to the vendor before 17.05.2016 and, therefore, no addition could be made on this account. Assessee also submitted that the provisions of section 56(2)(vii)(b)(ii) of the Act which applied to cases of inadequate consideration has come into force from AY 2014-15 i.e. with effect from 01.04.2014 and hence was not applicable to the assessment year under consideration i.e. AY 2013-14. Therefore, the assessee submitted that no addition could be made applying this provision of law. After considering the detailed submission of the assessee, the Ld. CIT(A) deleted the addition of Rs.1,69,81,700/- by observing as under:

*“4.....I find that the appellant entered into a registered deed of conveyance dated 26-03-2013 with Ms Euraka Mercantiles Private Limited (aka Ritman Mercantiles Pvt Ltd) and the appellant had purchased flat no 4A at premises no 21 Chakraberia Road (S) for a consideration of Rs.29,50,000 along with a parking for Rs.50,000 thus the total consideration as declared in the deed was Rs.30,00,000. The Vendor treated the entire amount paid executed the deed of conveyance and handed over the possession of the flat and car parking to the appellant. I find that the Vendor Ms Euraka Mercantiles Private Limited (aka Ritman Mercantiles Pvt Ltd) in its books of accounts recorded sale of flat for AY 2013-2014 at Rs.2,19,70,001 in which the flat sold to the appellant at Rs.30,00,000 was duly recorded. Similarly the appellant has disclosed the a sum of Rs.30,00,000 was recorded as Debt due to the said Vendor in her books of accounts. The Appellant paid the Vendor a sum of Rs.2,00,000 on 21-05-2014 and Rs.28,00,000 was paid by 4 cheques from 10-05-2016 to*

17-05-2016. I find that the AO has held that the registration of the flat was done without any consideration is factually incorrect. On reading of the entire deed of conveyance I find that the assessee purchased the flat along with one car park for Rs .30,00,000; however this amount was unpaid purchase price and the Vendor had provided the credit to the appellant to purchase the flat. The AO himself has recorded in the assessment order that the appellant and the Vendor are closely associated (para 4.7). I therefore find that due to the close relationship of the parties the grant of credit to purchase the flat was not unusual. The Vendor transferred the flat on the basis of unpaid purchase price which was to be reflected as a loan in the books of the Vendor and the Purchaser. This was a commercial decision of the Vendor and the AO could not question the same. There is a mark difference on credit sale and transfer without consideration i.e. Gift. Sale of credit is a very normal business practise and has been prevalent for centuries. The AO was not justified in holding that the transfer was without consideration. I hold that the transfer of the flat and car park was for consideration of Rs.30,00,000. In view of the above finding that the sale of the flat was for consideration, the provisions of Section 56(2)(vii)(b) of the IT Act 1961 was not applicable to the facts of the case. The said section was applicable in case of sale of flat without consideration and in this case the sale was for consideration of Rs.30,00,000. The AO was not justified in adding Rs.1,69,81,700 by invoking the provisions of Section 56(2)(vii)(b) of the IT Act 1961. I therefore delete the addition of Rs.1,69,81,700.

4.1. I also find that the Finance Act 2013 had widened the scope of addition in case of transaction of immovable property for inadequate transaction. I have examined the said provisions and the notes to the Finance Act 2013. I find that it is clearly recorded in the said Act that the clause for taxing transaction of immovable property for inadequate transaction was introduced from AY 2014-15 and not AY 2013-14. I find that the said provisions of Section 56(2)(vii)(b)(ii) of the Act are not retrospective and would apply prospectively from AY 2014-15. This is endorsed by the decision of the larger bench of the Apex Court in the case of Vatika Township Pvt. Ltd. (2014) 49 taxmann.com 249. Therefore, the amendment and inserting of provisions of Section 56(2)(vii)(b)(ii) of the Act is prospective and will apply from AY 2014-15 and will not cover the transaction of the appellant as the same was concluded in AY 2013-14.”

4. Aggrieved by the aforesaid order of the Ld CIT(A), the revenue is before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee had produced the conveyance deed dated 26.03.2013 wherein the sale consideration was specified as Rs.30,00,000/-. We also note that the assessee had made the entire payment subsequently through ICICI Bank and Kotak Mahindra Bank as follows:

	Payment reference	Payment date	Payment amount
ICICI Bank	Chq. No.731240, 21.05.14	23.05.2014	Rs. 2,00,000
Kotak Mahindra Bank	RTGS: KKBKR52016051000729414	10.05.2016	Rs. 5,00,000
	KKBKR52016051300867021	13.05.2016	Rs. 5,00,000
	KKBKH516137630261	16.05.2016	Rs. 7,00,000
	KKBKR52016051700686338	17.05.2016	Rs.11,00,000
		Total	Rs.30,00,000

6. We also note that the assessee had also filed the following documents to corroborate the fact of payment of the consideration to the vendor.

Documents	Annexure	Page No.
Ledger accounts of the assessee in the books of Seller showing receipt of subsequent payment	D	21-22
Bank statements (ICICI Bank & Kotak Mahindra Bank) of assessee showing subsequent payment	E	23-24
Ledger of Ritman Pvt. Ltd. in the books of S. Adhikary	F	25-25
Money receipt & Bank Statement of Ritman and Balance confirmation statement of Ritman on 18.05.16.	F	26-28

7. We also note that the AO has made the addition based on the provisions of the Finance Act 2013 in respect of sec. 56(2)(vii) of the act. The objective of the amendment is discernible from the explanatory note to the Finance Act, 2013 which is as follows:

*“14. Taxability of immovable property received for inadequate consideration*

*14.1 Sub clause (b) of clause (vii) of sub-section (2) of section 56 of the Income-tax Act, before its amendment by the Act, inter alia, provided that where an immovable property is received by an individual or HUF without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources.*

*14.2 The said provision does not cover a situation where the immovable property has been received by an individual or HUF for (inadequate consideration. Accordingly, the provisions of clause (vii) of sub-section (2) of section 56 have been amended so as to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the difference between the stamp duty value of such property and the consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources.*

*14.3 Considering the fact that there may be a time gap between the date of agreement and the date of registration, it has been provided that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by Page 27 of 56 any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable property.*

*14.4 Applicability: - This amendment takes effect from 1st April, 2014 and accordingly, applies in relation to the assessment year 2014-15 and subsequent assessment years.”*

8. We note that since the conveyance deed has been executed on 26.03.2013, the sale transaction has happened in the AY 2013-14, sec. 56(2)(vii)(b)(ii) of the Act was not applicable because for inadequate consideration the amended provision is applicable with effect from 01.04.2014 that means the said provision is applicable from AY 2014-15. Since the consideration for purchase of property was agreed upon by the vendor and the assessee at Rs. 30 lakhs, no addition was possible under sec. 56(2)(vii)(b) of the Act as the law stood at that time and we note that later the entire sale consideration has been paid by account payee cheque by the assessee to the vendor, therefore, the addition was not sustainable. Hence, the Ld. CIT(A) has rightly allowed the appeal of the assessee and we do not find any infirmity in the order of the Ld. CIT(A) and, therefore, we dismiss the revenue's appeal.

9. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 29/06/2018

Sd/-  
(M. Balaganesh)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated :29th June, 2018

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Ward-31(4), Kolkata.
2. Respondent – Smt. Sancheta Adhikary, 10/B, Paddapukur Road, Kolkata-700 020.
3. The CIT(A) - 9, Kolkata. (sent through e-mail)
4. CIT , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary