

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (D), KOLKATA  
[Before Shri P.M. Jagtap, Vice President & Shri S.S. Viswanethra Ravi, JM]**

**I.T.A. No. 2406/Kol/2017  
Assessment Year: 2014-15**

**Mr. Jamil Akhtar.....Appellant**  
**C/o. M/s. A. Kayes & CO., Chartered Accountants,**  
**231, Kamalalaya Centre, 156A Lenin Sarani,**  
**Kolkata – 700 013.**  
**[PAN: AJMPA 3297 N]**

**ACIT (IT), Circle 1(2) Kolkata.....Respondent**  
**Aayakar Bhawan Poorva,**  
**Chamber No. 101, 1<sup>st</sup> Floor,**  
**110, Shanti Pally,**  
**Kolkata – 700 107.**

**Appearances by:**

*Shri V.N. Purohit, FCA appearing on behalf of the Assessee.*  
*Shri C.J. Singh, Sr. DR appearing on behalf of the Revenue.*

Date of concluding the hearing : November 20, 2018

Date of pronouncing the order : November 30, 2018

**ORDER**

**Per P.M. Jagtap, Vice President**

This appeal filed by the assessee is directed against the order of Ld. CIT(A) – 22, Kolkata dated 31.10.2017 and the grounds raised therein read as under:

*“1. For that on the facts and circumstances of the case, the Ld. CIT(A) – 22, Kolkata has erred in facts and in law in restricting the addition to Rs. 11,49,086/- u/s 56(2)(vii)(b)(ii) of the Income Tax Act being the difference between the fair market value determined by the DVO (District Valuation Officer) and Deed Value of property at 4, Parvez Shardi Range, Kolkata, in spite of the fact that the property in question was agreed to have been purchased by the appellant vide Agreement of Purchase dated 28.01.2011 relevant to Assessment Year 2011-12 being prior to 01.04.2014 (Assessment Year 2014-15) when the amended provision of Section 56(2)(vii)(b)(ii) came into effect by way of Finance Act, 2013.*

*2. For that on the facts and circumstances of the case, the addition of Rs. 11,49,086/- u/s 56(2)(vii)(b)(ii).”*

2. The assessee in the present is an individual who is employed as Marine Engineer on board vessels plying in international water. The return of income for the year under consideration was filed by the assessee on 26.07.2014 declaring a total income of Rs. 3,37,420/-. The assessee as per the purchase deed executed on 11.12.2013 and registered on 16.12.2013 had purchased a property at 4, Parvez Shardi Range, Kolkata for a total consideration of Rs. 76,00,000/-. As the market value of the said property on the date of registration was determined by the stamp duty authority at Rs. 3,31,06,250/-, the difference of Rs. 2,55,06,250/- was added by the A.O. to the total income of the assessee u/s 56(2)(vii)(b)(ii) of the Act in the assessment completed u/s 143(3) vide an order dated 27.12.2016.

3. The addition of Rs. 2,55,06,250/- made by the A.O. u/s 56(2)(vii)(b)(ii) was challenged by the assessee in the appeal filed before the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), a detailed submission was made by the assessee in support of its case on the issue and after considering the same as well as the material available on record including the remand report submitted by the A.O., the Ld. CIT(A) restricted the addition of Rs. 2,55,06,250/- made by the A.O. to Rs. 11,49,086/- for the following reasons given in paragraph no. 8 of his impugned order:

*"Having carefully considered the issue I find that the matter has been referred to the DVO on the request of the appellant, and there can be no injury caused to the appellant as the Act envisages such a reference in case the valuation by the Competent Authority is not acceptable to the assessee-individual as it has happened in the case at hand. I have also considered the objections made by the appellant in so far as stating that the impugned transactions relate to a part purchase dated 28.01.2011*

*relevant to the A.Y. 2011-12 which is prior to 01.04.2014, i.e. Assessment Year 2014-15 when the amendment came into force taxing the difference between the Deed Value and Stamp Duty Value u/s 56(2)(vii)(b)(ii) of the Income Tax Act for the first time. The same stands rejected and I hold that the Ld. A.O. was correct in referring the matter to the Valuation Officer, who in any case, all things considered has taken the date of valuation of the property as 28.01.2011, which is the date of initial payment if the 1<sup>st</sup> instalment for the purchase of the property at 'A' as has been claimed by the assessee. I agree with the observations of the Ld. A.O. made in the Remand Report, that as the date of valuation of the property was done on the initial date of agreement, the assessee-individual should not have any grievance on this score. Therefore, I hold that it would be fair and equitable to hold that the valuation done by the DVO amounting to 87,49,086/- in respect of the property at 'A' above should be considered for determining the addition u/s 56(2)(vii)(b)(ii) of the Income Tax Act. The Ld. A.O. is directed to act accordingly. As such the addition on account of the valuation is to be restricted to Rs. 11,49,086/-, the figure arrived on consequence to the reference to the DVO."*

Still aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. The main contention raised by the learned counsel for the assessee before us is that the property in question was purchased by the assessee on 28.01.2011 and therefore the provisions of section 56(2)(vii)(b)(ii) inserted in the statute with effect from 01.04.2014 were not applicable. He has also filed a copy of the memorandum of understanding made on 28<sup>th</sup> January, 2011 duly notarised and contended that the impugned addition made by the A.O. and sustained by the Ld. CIT(A) by relying on the provisions of section 56(2)(vii)(b)(ii) is not maintainable. The learned DR, on the other

hand has submitted that the copy of MOU made by the assessee on 28<sup>th</sup> January, 2011 was not produced by the assessee before the A.O. as mentioned in paragraph no 7 of assessment order. It is however observed that the said MOU was duly taken into consideration by the A.O. in the remand report and even the market value of the property purchased by the assessee was got determined by him from the DVO as on 28<sup>th</sup> January, 2011. The valuation so made of the property purchased by the assessee as on 28<sup>th</sup> January, 2011 was also accepted by the A.O. in the remand report and by relying on the same, the addition of Rs. 2,55,06,250/- was restricted by the Ld. CIT(A) to Rs. 11,49,086/-. The fact that the property in question was agreed to be purchased by the assessee on 28.01.2011 thus was accepted by the authorities below and this being so, we find merit in the contention of the learned counsel for the assessee that the impugned addition made by the A.O. and sustained by the Ld. CIT(A) by relying on section 56(2)(vii)(b)(ii) cannot be sustained as the said provision was inserted with effect from 01.04.2014. We, therefore, delete the said addition and allow this appeal of the assessee.

**5. In the result, the appeal of the assessee is allowed.**

Order Pronounced in the Open Court on 30<sup>th</sup> November, 2018.

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

Sd/-  
(P.M. Jagtap)  
VICE PRESIDENT

**Dated: 30/11/2018**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Mr. Jamil Akhtar, C/o. M/s. A. Kayes & Co., Chartered Accountants, 231, Kamalalaya Centre, 156A Lenin Sarani, Kolkata – 700 013.
2. ACIT (IT) Circle 1(2), Aayakar Bhawan Poorva, Chamber No. 101, 1<sup>st</sup> Floor, 110, Shanti Pally, Kolkata – 700 107.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.  
ITAT, Kolkata