

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA  
[Before Sri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 1114/Kol/2018**

Assessment Year: 2014-15

**Rajesh Kumar Jha.....Appellant**

**22, Radha Apartment  
2/3, Bamangachi Raghav Koley Lane  
Salkia  
Howrah - 711 106  
[PAN : AGAPJ 6535 B]**

**Income Tax Officer, Ward-47(2), Kolkata.....Respondent**

**Appearances by:**

*Shri Somnath Ray Chowdhury, Advocate, appeared on behalf of the assessee.*

*Shri Robin Choudhury, Addl. CIT Sr. D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : March 12<sup>th</sup>, 2019

Date of pronouncing the order : April 26<sup>th</sup>, 2019

**O R D E R**

**Per J. Sudhakar Reddy :-**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) - 14, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 28/03/2018, for the Assessment Year 2014-15.

2. The assessee is a medical practitioner. The assessee purchased a flat located at Eden City, Tower No. D1, Flat No. 203, 2<sup>nd</sup> Floor, Mahestala, South 24 Parganas, Kolkata - 700 137, measuring 1377 sq. ft. The assessee was allotted this flat by the vendor vide allotment letter dt. 28/01/2011. This is stated in the registered sale deed dt. 24/01/2014 at para 13. The sale consideration was paid in the following manner:-

<b>Date</b>	<b>Cheque No.</b>	<b>Bank</b>	<b>Amount (in Rupees)</b>
16.12.2010	890870	ICICI	1,00,000
26.09.2011	738975	HDFC	2,05,693
01.05.2011	4996	ICICI	1,90,626
01.05.2011	4997	ICICI	2,34,585
23.05.2011	731818	HDFC	15,80,925
09.05.2013	233251	HDFC	81,126
14.05.2013	18964	ICICI	2,31,300
		<b>TOTAL</b>	<b>26,24,255</b>

2.1. The total sale consideration paid by the assessee was Rs.26,24,255/-. As on the date of registration of the sale deed, the market value assessed by the registering authority was Rs.38,78,330/-. The Assessing Officer added the difference between the purchase price and the market value assessed by the

registration authorities under the Stamps and Registration Act, of Rs.12,69,415/- u/s 56(2)(vii)(b) of the Act. On appeal, the Id. First Appellate Authority confirmed the addition.

3. Aggrieved the assessee is before me.

4. I have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, I hold as follows:-

5. The first and second provisos to Section 56(2)(vii)(b) of the Act, read as follows:-

*"[(b) any immovable property,—*

*(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*

*(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:*

***Provided*** that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

***Provided further*** that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;]"

6. In the case on hand, the assessee applied for and was allotted a flat vide allotment letter dt. 28/01/2011. The payments in question were made by cheque from 16/12/2010, onwards. The application for purchase of flat and allotment, in my view, is an agreement. The payments in question have been made by banking channels. Thus, this case is covered by the provisos to Section 56(2)(vii)(b) of the Act. Hence the addition in question cannot be sustained and the same is hereby deleted.

7. In the result, appeal of the assessee is allowed.

***Kolkata, the 26<sup>th</sup> day of April, 2019.***

**Sd/-**  
**[J. Sudhakar Reddy]**  
 Accountant Member

*Copy of the order forwarded to:*

**1. Rajesh Kumar Jha**  
**22, Radha Apartment**  
**2/3, Bamangachi Raghav Koley Lane**  
**Salkia**  
**Howrah - 711 106**

**2. Income Tax Officer, Ward-47(2), Kolkata**

3. CIT(A)-

4. CIT- ,

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

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches