

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.334/Bang/2019
Assessment Year : 2013-14

Shri K.M. Srinivas Murthy, No. 5/25, 3 rd Cross, 1 st Block, Jayanagar, Bangalore – 560 011. PAN: ALLPS6362F	Vs.	The Assistant Commissioner of Income Tax, Circle – 7 (2) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri Tshering Ongda, JCIT (DR)
Date of hearing	:	15.05.2019
Date of Pronouncement	:	31.05.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT (A)-10, Bangalore dated 01.03.2018 for Assessment Year 2013-14.

2. The grounds raised by the assessee are as under.

“1. The learned Assessing Officer had erred in holding that the provision of section 56(2) is applicable in case of the appellant and in making an addition of Rs. 31,12,580/- to the income of the appellant. The provisions of section 56 having not applicable to the case of the appellant, the additions as made is not justified and is required to be deleted.

2. The learned CIT(A) was also erred in holding that the difference between stamp value of the property and actual value of property is to be treated as income by applying provisions u/s. 56(2)(vii)(b) of the I.T. Act, 1961.

3. The provision u/s, 56(2) (vii) (b) is not applicable to the case of the appellant, the additions sustained is to be deleted.

4. In any case and without prejudice, the addition is erroneous and excessive.

5. The appellant also denies liability to pay interest u/s. 234B of the Act. The interest having been levied erroneously are to be deleted.

6. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or at least the addition of Rs. 31,12,580/- as made to income to be deleted and interest levied to be deleted.”

3. It was submitted by Id. AR of assessee that the addition is made by the AO by invoking the provisions of section 56(2)(vii)(b) of IT Act. Thereafter the assessee pointed out that as per para 3 of the assessment order, the AO has made addition of Rs. 31,12,580/- on this basis that there is difference in the amount as per guidance value and actual purchase cost. She also submitted that the AO has stated in para 3 of the assessment order that it was brought to the notice of the assessee's AR to add back the difference of Rs. 31,12,580/- for which assessee's AR agreed. She submitted that as per section 56(2)(vii)(b) of IT Act before amendment by Finance Act, 2013 w.e.f. 01.04.2014, the addition could have been made if any immovable property was received without consideration and for that purpose, the stamp duty value could have been adopted and only as per this amendment by Finance Act, 2013 w.e.f. 01.04.2014, this was provided that if any immovable property is acquired 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 can be added. She submitted that in present case, Assessment Year involved is 2013-14 and therefore, pre amended provisions are applicable and as per the same, the addition cannot be made in the present case. She also pointed out that even if the assessee's AR has agreed before the AO for this addition, this addition is not justified because the same is not as per law. The Id. DR of revenue supported the orders of authorities below. He also submitted that once the AR of assessee agreed before the AO, the addition made by the AO should be confirmed.
4. I have considered the rival submissions. First of all, I reproduce the provisions of section 56(2)(vii)(b) as it appeared in the statute book before the amendment by Finance Act, 2013 and below that, I also reproduce the provisions of section 56(2)(vii)(b) after that amendment. The same are as under.

Pre amendment

“56(2)(vii)(b) any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;”

Post amendment

“56(2) (vii) (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;”

5. As per the above provisions of section 56(2)(vii)(b) as it appeared in the statue book in the relevant Assessment Year, the addition made by the AO is not justified even if the Id. AR of assessee has agreed to this addition in course of assessment proceedings because such addition is not as per law. Therefore, I delete the same.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 31st May, 2019.
/MS/

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.