

**સાચકર અડીલાય અધકરણ, અહમદાબાદ ડયાયડીઠ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" A " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**

**Ms. MADHUMITA ROY, JUDICIAL MEMBER**

આચકર અડીલ સં./ITA No. 1982/AHD/2017

With

**C.O.No.2/Ahd/2019**

જઠાણ વષ/Asstt. Year: 2014-2015

Income Tax Officer, Ward 4(2)(5), Ahmedabad.	Vs.	Shri Satish Laljibhai Bharwadi, Gopal Farm, Near Sahara City, S.P. Ring Road, Sarkhej, Ahmedabad-382210.  PAN: APCPM1261Q
--	-----	--

(Applicant)		(Respondent)
Revenue by :		Shri S.K. Dev, Sr.D.R
Assessee by :		Shri Deepak Shah, A.R

સુનવાઈ કા તારાખ/Date of Hearing : 16/05/2019

ઘોષણા કા તારાખ /Date of Pronouncement: 29/05/2019

**આદેશ/O R D E R**

**PER BENCH:**

The captioned appeals have been filed at the instance of the Revenue and Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-4, Ahmedabad dated 30/06/2017 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 26/12/2016 relevant to Assessment Year

(AY) 2014-15. Assesse has filed Cross Objection No.02/Ahd/2019 in the Revenue's appeal bearing no.1982/Ahd/2017 for the Assessment Year 2014-2015.

The Revenue has raised the following grounds of appeal;

*“1. That the ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 68,90,475/- made u/s. 56(2)(vii)(b) of the Income Tax Act on account of difference between purchase consideration as per purchase deed and the stamp duty value.*

*1.1 That the Ld. CIT(A) has erred in law and facts by not holding that the registered agreement of sale alongwith the possession of the property constitute transfer under sec 2(47) of the Income Tax Act and accordingly the assessee had “received” the said property in term of sec 56(2)(vii) of the Act.*

*1.2 That the Ld. CIT(A) has failed to appreciate that the word “received” as appearing in the said section is of much wider amplitude and is not pari material with the nature of the word “sale” as defined in the Transfer of Property Act and as such it (“received”) will include transaction within realm of sec. 53A of the Transfer of Property Act.*

*2. That the Ld. CIT(A) has failed to appreciate the decision of the Hon’ble Supreme Court in the case of Sanjivlal Vs. CIT (365 ITR 389(SC)) wherein it was held that once an agreement to sell an immovable property is executed in favour of the buyer, the said buyer gets a right to get the property transferred in his by filing a suit for specific performance.”*

The interconnected issue raised by the Revenue is that the Ld. CIT (A) erred in deleting the addition of Rs. 68,90,475/- made u/s 56(2)(vii)(b) of the Income Tax Act by the AO.

2. The facts of the case are that the assessee an Individual and engaged in the profession of Legal Consultancy Services. The AO during the assessment proceedings observed that the assessee had acquired a property situated at Block No. 367, admeasuring 10,522 sq. meters for a consideration of Rs.

70,00,000/- vide sale deed dated 14-07-2016. The assessee initially has acquired the property through registered agreement deed dated 10-12-2013.

2.1 However, on perusal of the agreement deed, the AO found that the assessee paid stamp duty of Rs. 10,19,500/-. After that, the AO u/s 133(6) called the stamp duty value from the sub-registrar. As the value adopted by the sub-registrar was Rs. 2,07,80,950/- while the agreement was made on 10-12-2013 was only for Rs. 70,00,000/-. Thus the AO was of the view that the consideration had been understated by the assessee to reduce his tax liability.

The assessee in support of the claim submitted that the agreement was originally entered for Rs. 2,08,00,000/- for purchase of land along with other 2 co-owners. Therefore the stamp duty of Rs. 10,19,500/- was paid accordingly and paid an advance of Rs. 70,00,000/- at the time of the agreement. As such his share in the said land was 34% which comes to Rs. 24,00,000/-. However, as per the terms of the agreement, the sale deed was to be executed within a period of 16 months thereof.

2.2 The assessee also submitted that after entering the agreement, he came to know that there was litigation of right/ownership on the said property. Therefore one of the co-owners waives their interest in acquiring the property. Thus the final sale deed cannot be executed on the reason recorded as above.

2.3 After that the assessee executed revised sale deed along with remaining one co-owners with the share of 50% on dated 14-07-2016 for an amount of Rs. 70,00,000/- to secure his amount, which was paid earlier at the time of the agreement.

2.4 The assessee in support of the claim submitted all the relevant documents like Agreement to sell, final sale deed along with PAN No. of all seller and buyer before the AO.

2.5 The AO disregarded the contentions of the assessee as he received the property less than the value determined by the Stamp Duty Authority and added Rs. 68,90,475/- (i.e., the difference of SDV and consideration paid by him) to the total income of the assessee u/s 56(2)(vii)(b)(ii) of the Act.

3. The aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Ld. CIT (A) submits that the AO allegation was wrong as he did not receive the immovable property against the consideration paid by him while the payment was made for the right to acquire the property.

3.1 The assessee further submitted that the provision of section 56(2)(vii)(b)(ii) would be applied where any Individual or HUF acquired/received property where the difference between the consideration paid and value adopted by the stamp duty valuation authority is more than Rs. 50,000/-.As such, the consideration was decided at the time of agreement to sell Rs. 2,08,00,000/- which was more than the value determined by the Stamp Duty Valuation Authority. Therefore the addition made by the AO was not to be required.

3.2 However, the Ld. CIT (A) disagreed with the contention of the assessee that he acquires a right not an immovable property whereas the Ld. CIT (A) observed that the assessee acquired an immovable property by making part payment of Rs. 70,00,000/- at the time of agreement to sell along with the

possession of the said property as per the provisions of section 53A of TP Act.

3.3 The Ld. CIT (A) further observed that the agreement to sell was executed on dated 10-12-2013 to acquire the property for a sum of Rs. 2,08,00,000/-. Thus the provision of section 56(2) does not apply in the year under consideration as the value of the property decided between the parties was more than the Stamp Duty Value.

3.4 Therefore the Ld. CIT (A) deleted the addition made by the AO u/s 56(2)(vii)(b)(ii) of the Act, as the provision of section 56(2)(vii)(b)(ii) of the Act will be applicable in the financial year 2016-17 in which the sale deed was executed.

Aggrieved by the order of the Ld. CIT (A), the Revenue is in appeal before us.

4. The Ld. DR before us contended that the assessee made the subsequent agreement after the issuance of notice under section 143(2) of the Act. Therefore, it is clear that it was made to avoid the income under section 56(2)(vii)(b)(ii) of the Act. Therefore, the same should not be considered while working out income.

5. The learned DR also submitted that the transaction for the transfer of the property had taken place in the year under consideration as per the provisions of section 2(47) of the Act. The learned DR in support of his claim relied on the judgment of the Honøble Supreme Court in the case of Sanjeev

Lal Vs. CIT reported in 365 ITR 389. The learned DR vehemently supported the order of the AO.

6. On the other hand, the Ld. AR before us filed a paper book running from pages 1 to 132 and submitted that the provisions of section 56(2)(vii)(b)(ii) are not applicable to the case on hand as the assessee by way of the agreement acquired the right in the property and not the immovable property.

6.1 The learned AR further submitted that the value of the property was revised to ₹ 70 lakhs as the title of the property was not clear. As such the agreement was made with the condition that the seller will make the title of the property clear from all the encumbrance. The learned AR vehemently supported the order of the learned CIT (A).

7. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee has acquired a property jointly vide agreement dated 10-12-2013. As per the agreement, the consideration was decided at Rs. 2,08,00,000/- which is more than the value prescribed by the stamp valuation authority. Accordingly, the assessee paid the stamp duty on the consideration of Rs. 2,08,00,000/- amounting Rs. 10,19,500/- only. However, the assessee subsequently revised the consideration at Rs. 70,00,000/- vide revised agreement dated 14-07-2016, which was also declared in the sale deed dated 14-07-2016.

7.1 Accordingly, the AO was of the view that the difference of Rs. 1,37,80,950/- (2,07,80,950 ó 70,00,000) being the stamp value and the actual

consideration paid by the assessee along with co-owners is the income under the provisions of section 56(2)(vii)(b) of the Act. The assessee being 50% owner in such property generates income of Rs. 68,90,475/- under the provisions of section 56(2)(vii)(b) of the Act. Accordingly, the same was added to the total income of the assessee.

7.2 However, the Ld. CIT (A) deleted the addition made by the AO by observing that the assessee revised the consideration vide agreement dated 14-07-2016 which occurred in the financial year 2016-17. Therefore as per the Ld. CIT (A) the income of the assessee is liable to tax under section 56(2)(vii) of the Act in the financial year 2016-17 corresponding to the assessment year 2017-18.

7.3 From the preceding discussion, the following issues emerge for our adjudication:

- i. Whether the provisions of section 56(2)(vii)(b) apply to the transaction under consideration as the impugned transaction represents the right in the property.
- ii. Whether the assessee is liable to pay tax under section 56(2)(vii)(b) of the Act in the financial year 2016-17 corresponding to the assessment year 2017-18 in the given facts & circumstances.
- iii. Whether the matter needs to be referred to the DVO for valuing the property as the title of the property was not clear therefore the provisions of section 50C of the Act could not be applied in the given facts and circumstances.

7.4 Regarding question No. 1, we note that the impugned transaction was not limited to the transfer of the right in immovable property. It is because the



7.7 Regarding question No. 2, we note that the income of the assessee accrued to him under the provisions of section 56(2)(vii) of the Act is taxable in the assessment year 2014-15 and not in the assessment year 2017-18 as held by the learned CIT (A). It is because the transaction for the transfer of the property was completed in the year under consideration. As such, the subsequent revision in the agreement to any reason will not change the character of the transaction. Therefore the value in the revised agreement has to relate with the original agreement dated 10-12-2013. The subsequent agreement does not represent any new transaction. The subsequent agreement dated 14-07-2016 is the mere extension of the original agreement made in the year 2013. Accordingly, we do not concur with the finding of the Ld. CIT (A).

Regarding question No. 3, we note that the assessee before the AO has contended that the title of the property was not clear and it was the duty of the seller to make the title free from all encumbrances. This fact can be verified from the revised agreement dated 14-07-2016. The relevant extract of the revised agreement is reproduced as under:

*“6. In the above referred Agreement for Sale with possession executed between the Party of the First Part Seller and the Party of the Second Part Purchasers, it was affixed that the Party of the First Part Seller, at its own costs, consequences and risks, shall get cleared all the titles of the said land as completely clear, fully marketable and transferrable and further, it was also affixed that the Party of the First Part Seller on the say of the Party of the Second Part Purchasers, shall obtain at its own costs, consequences and risks, a Certificate to the effect that all the titles of the said land are completely clear, fully marketable and transferable. But since the Party of the First Part Seller is not in a position to get cleared all the titles of the said land as completely clear, fully marketable and transferrable, the Party of the First Part Seller had intimated to the Party of the Second Part Purchasers regarding this fact and hence, thereafter once again discussions were held in respect of the said land in between the Party of the First Part Seller and the Party of the Second Part Purchasers and at the end of such discussions, the Party of the*

*First Part Seller and the Party of the Second Part Purchasers have affixed the total price of the said land at Rs. 70,00,000.00 [Rupees seventy lacs only], instead of the old price affixed of Rs. 2,08,00,000.00 [Rupees two crores eight lacs only]. Hence, now on that new sales price, the Party of the First Part Seller has decided to sell the said land to the Party Seller has decided to sell the said land to the Party of the Second Part Purchasers and hence, now the Party of the Second Part Purchasers shall have to pay the total price of the said land at Rs. 70,00,000.00 [Rupees seventy lacs only], instead of the old price affixed of Rs. 2,08,00,000.00 [Rupees two crores eight lacs only]. Hence, this fact is since acceptable and binding to both the parties hereto, i.e. the Party of the First Part Seller and the Party of the Second Part Purchasers, a need has arose for both the parties to amend the total sales price as mentioned in condition No. {B} of the previously executed Agreement for sale with possession executed between the Party of the First Part Seller and the Party of the Second Part Purchasers and hence, the present Amendment Agreement is hereby being executed between both the parties hereto as under.”*

7.8 Now, the question arises whether there was any dispute in the title of the impugned property. Regarding this, we find that the assessee has obtained a report from the Jani & Co., solicitors, and advocates which is placed on pages 116 to 122 of the paper book. The relevant extract of the report highlighting the disputes is extracted below:

19. *That said (1)Ibrahimbhai Usmanbhai, as self and ad guardian of minors (a) Irfanhussain Ibrahimbhai and (c) Javedrmssain Ibrahimbhai sold and conveyed the land bearing Block no. 367 admeasuring 10,522 sq. mtrs. to (1) Gafurbhai Vasibhaj (2) Mithiben V'asibhai and (3) Raghubhai Vasibhai vide a sale deed dated 08-12-2005 registered before the Sub Registrar, Sanand at Serial No. 2816 on 13-12-2005. Mutation entry to the said effect was made in the revenue records of the said land vide Entry No. 2651 dated 22-12-2005. The said; entry was cancelled as a charge was recorded in the column of other rights. Its effect was once again mutated vide Entry No. 2740 dated 01-07-2006.*

20. *That said (3) Lacluben wd/o Jahangir Jarnalbai and (2) Bibiben d/o jahangirbhai Jamalbai entered into art Agreement for Sale dated 22-03-2006 in favour of (1) Manojbhai Jivabhai Chunara (having 35% share) (2)Mo.harnmad Hanif Gulmahammad. Sheikh: (having 35% share) (3) JVlohammad Imtiaz Fateh Mohammad (having 15% share) and (4) Iqbalbhai Ismailbhai Mirza which was: registered before the Sub Registrar, Sanand at Serial No. 1021 on 22-03-2006 in respect of their undivided share in the land bearing Survey Mo. 294 admeasuring 10/522 sq. mtrs. In the said Agreement for Sale, earlier agreement rights holders viz. (1) Mohauiad Mustaaf Fateh Moharriad Sheikh and (2) Monamnd Umar alias Fughter Majid Ahmed Fa than joined as confirming parry and confirmed die said transaction. However, the said Agreement for Sale came to be cancelled vide Deed of Cancellation dated 17-05-2007 registered before the Sub Registrar, Sanand at Serial No. 2687 on 18-05-2007. Note: The said Deed of Cancellation has been*

*unilaterally executed by said (1) Laduben wd/o Jahangir Jamalbhai and -(2) Bibiben d/o jahangirbhai Jamalbhai.*

*21. That said (1) Laduben wd/o Jahangir Jenialbhai (2) Bibiben d/o Jahangir Jamalbhai and (3) Gulshanbibi alias Kulsumben d/o Jahangir Jamalbhai entered into an Agreement for Sale dated 13-07-2007 in favour of Ashishbhai Prafulbhai Patel in respect of their undivided share in the land bearing Block No. 367 admeasuring 10,522 sq mtrs. And the same was registered before the Sub Registrar, Sanand at Serial NO.3710 on 13-07-2007.*

Besides the above, we find that the assessee during the assessment proceedings has also filed the valuation report, which is placed on pages 110 to 115 of the paper book. As per the report, the valuation of the property the sale price as declared in the sale deed and the agreement deed dated 14-07-2016 was accepted as correct. The relevant extract of the report is reproduced as under:

*VII) LIST OF DOCUMENTS REFERRED FOR THIS OPTION;*

- A) Agreement to sale Dated 10/12/2013.*
- B) Revised Agreement to sale Dated 14/07/2016*
- C) Sale deed Dated 14/07/2016*
- D) Title certificate \_Cum \_Report Dated 01/12/2016.*

*The valuation opinion is based on the above documents, and were rely upon its content which are considered to be true.*

7.9 In view of the above, there remains no ambiguity that the title of the property was not clear and therefore the value of the property was revised by the assessee vide agreement dated 14-07-2016. All the details were available before the AO during the assessment proceedings. In our considered view the right course of action available to the AO was to refer the matter to the DVO as provided in the proviso attached to section 56(2)(vii) of the Act which reads as under:

***“Provided** that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a*

*Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections.”*

7.10 However, the AO, despite having the necessary details not chose to refer the matter to the TPO. Now the question arises whether the dispute on hand needs to be referred to the AO to determine the income of the assessee under the provisions of section 56(2)(vii) of the Act.

7.11 Regarding this, we are of the view that the Revenue was in possession of all the details regarding the value of the property and the dispute in the in the title of the property. But the AO has not pointed out any defect in the details filed by the assessee during the assessment proceedings.

7.12 We further note that the report from the consultant was obtained after the agreement. But that does not mean that the assessee has adopted some unfair means to determine the value of the property less than the stamp duty valuation.

7.13 At the time of the hearing, a query was posted to the Ld. DR whether the disputes raised by the consultant in the report are bogus. However, the learned DR failed to bring anything on record contrary to the report of the consultant.

7.14 After considering the facts in totality as discussed above, we are of the considered view that the property in dispute did not have a clear title. Therefore we direct the authorities below to accept the sale consideration has declared by the assessee in the revised agreement dated 14-07-2016 which

was also supported with the sale deed dated 14-07-2016 which is placed on pages 22 to 36 of the paper book. Hence the ground of appeal of the Revenue is dismissed.

In the result, the appeal filed by the revenue is dismissed

**Coming to the CO raised by the assessee.**

The assessee has raised following grounds in his CO.

*“1. That the Ld. CIT(A) erred n law and in the facts of the case in considering the acquisition in the right in the property as equivalent to acquisition of the property u/s. 56(2)(vii)(b) and thereby holding that the said section is applicable to the facts of the case.*

*2. Any other ground which may be urged before or during the hearing of this appeal.”*

8. At the outset, it was observed that there was a delay of 37 days in filing the CO by the assessee. The assessee in the affidavit has submitted that the delay in filing the CO occurred due to the mistake of the consultant. Accordingly the assessee prayed to condone the delay for filing the CO. On the other hand, the learned DR did not object if the delays condone in the given facts and circumstances. Accordingly, we condone the delay and proceed to adjudicate the ground raised by the assessee in his CO.

8.1 The only issue raised by the assessee is that the Ld. CIT (A) erred in holding that the impugned transaction for the transfer does not represent the transfer of right in the property.

9. We have already decided this issue against the assessee along with the appeal filed by the revenue in ITA 1982/AHD/2017 vide para number 6 of this order. Therefore the ground raised by the assessee in his CO is dismissed.

In the result, the CO filed by the assessee is dismissed.

10. In the combined result, the appeal filed by the Revenue is dismissed, and the CO filed by the assessee is dismissed.

**Order pronounced in the Court on 29/05/2019 at Ahmedabad.**

**-Sd-**  
**(Ms. MADHUMITA ROY)**  
**JUDICIAL MEMBER**

**(True Copy)**

**-Sd-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 29/05/2019  
*Manish*