

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ & HZ)
and Shri Satbeer Singh Godara, Judicial Member**

**I.T.A. No. 79/KOL/2018
Assessment Year: 2014-2015**

Income Tax Officer,.....Appellant
Ward-40(3), Kolkata,
3, Government Place (West),
Kolkata-700 001
-Vs.-

Shri Jawed Iqbal,.....Respondent
96, Rabindra Sarani,
Kolatola, Kolkata-700 073
[PAN: AAKPI3262L]

Appearances by:
Smt. Ranu Biswas, Sr. D.R, for the Appellant
N o n e, for the Respondent

Date of concluding the hearing : September 23, 2019
Date of pronouncing the order : October 18, 2019

O R D E R

Per Shri P.M. Jagtap, Vice-President (Kolkata & Hyderabad Zone):-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-12, Kolkata dated 08.09.2017 and the solitary issue raised therein relates to the deletion by the Id. CIT(Appeals) of the addition of Rs.1,54,27,827/- made by the Assessing Officer under section 56(2)(vii)(b) of the Income Tax Act, 1961.

2. The assessee in the present case is an individual, who is engaged in the business of providing Cable TV & Broadband Services. He is also a Director in M/s. SRD Properties Pvt. Limited and partner in M/s. Cosmopolitan Builders & Developers. The return of income for the year

under consideration was filed by him on 29.10.2014 declaring total income of Rs.3,87,290/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that a large investment was made in the purchase of property and although the said property was claimed to have been purchased by the partnership firm of M/s. Cosmopolitan Builders & Developers, the name of the assessee was also mentioned in the relevant sale deed along with two other partners. According to the Assessing Officer, the partnership firm neither being a legal entity nor being a living person was not entitled to purchase any immovable property. He also noted that the total consideration paid for the said property as per the agreement was Rs.62,00,000/-, whereas the fair market value of the property for the purpose of stamp duty was determined at Rs.2,16,27,827/-. The Assessing Officer was of the view that this difference amount of Rs.1,54,27,827/- was liable to be added to the total income of the assessee in terms of provisions of section 56(2)(vii)(b) of the Act and the assessee, therefore, was required by him to offer his explanation in the matter. In reply, it was explained by the assessee that the partnership firm is treated as separate legal entity under the Income Tax Act, 1961 and it is liable to be assessed in the status of a partnership firm. It was also submitted by the assessee that the fact that the relevant deed for purchase of property in the name of the partnership firm of M/s. Cosmopolitan Builders & Developers was duly registered by the Registering Authority is sufficient to show that the partnership firm was entitled to purchase an immovable property. As regards the difference in the amount of consideration shown in the sale agreement and the fair market value of the property determined for the purpose of stamp duty, it was explained by the assessee that the property was occupied by twelve different tenants for a small rent and since they were occupying the property for more than thirty years, it could not be sold at a market price. The Assessing Officer did not find merit in the explanation offered by the assessee. He held that the partnership firm was not entitled to purchase any immovable property in its name and the

difference of Rs.1,54,27,827/- between the fair market value of the property as determined for the purpose of stamp duty and the amount of consideration shown in the relevant agreement was liable to be added in the hands of the assessee as an individual under section 56(2)(vii)(b) of the Act. He accordingly added the said amount to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 22.12.2016.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and a detailed submission was made by the assessee in support of his case on the issue, which as summarized by the Id. CIT(Appeals), was as under:-

“Since the property was purchased by the Partnership Firm M/s Cosmopolitan Builders & Developer, addition, if any, u/s 56(vii)(b)(ii) is to be made, in the hands of the partnership firm only and not in the hands of the appellant which is bereft of any legal sanction. Even in case of Partnership Firm, difference in valuation for purchase of immovable assets for Sale / Development purpose cannot be made in terms of Section 43CA of the Income Tax Act. Further Section 56(vii)(b)(ii) is not applicable on Partnership Firm.

Since the property was agreed to have been purchased vide Agreement of Purchase dated 24.12.2012 (copy enclosed for your kind perusal), relevant to the Assessment Year 2013-14 which is prior to 01.04.2014, i.e. Assessment Year 2014-15 when the amendment came into force w.e.f 01.04.2014 taxing the difference between the Deed Value and Stamp Duty Value, there is no legal sanction to tax the appellant under section 56(2)(vii)(b)(ii) of the Income Tax Act in respect of the said property.

The Ld. AO's contention that a partnership firm cannot purchase an immovable property as per Transfer of Property Act, is wholly and legally incorrect from the very fact that Registrar of Properties had duly registered the Purchase Deed in favour of the Partnership Firm. As per Transfer of Property Act, the Purchase Deed in question is a legally valid document in favour of the Partnership Firm duly registered by the Registrar. Moreover, Section 5 of the Transfer of Property Act does not prohibit purchase of property by Firm, AOP, Body of Individuals. The Ld. A.O. misunderstood the contents of the relevant provisions of Transfer of Property Act.

In view of the above submission, your kind honour is earnestly requested to delete the illegal and unjustified addition made by the Ld. AO amounting to Rs.1,54,27,827/- vide last para of the Assessment Order”.

4. The Id. CIT(Appeals) find merit in the submission made by the assessee and deleted the addition made by the Assessing Officer under section 56(2)(vii)(b) for the following reasons given in his impugned order:

I find force in the appellant's submissions. There is no doubt that as per the sale deed, the name of the buyer is M/s. Cosmopolitan Builders & Developers. The addition, if at all any, under any section under the I.T. Act, cannot be made in anyone else's name. The said property was purchased vide Agreement of Purchase dated 24.12.2012, which is relevant to assessment year 2013-14. It is not understood as to why the AO concluded that a partnership firm cannot purchase an immovable property as per Transfer of Property Act. This is wholly and legally incorrect from the very fact that Registrar of Properties had duly registered the Purchase Deed in favour of the Partnership Firm. For reasons discussed above, I do not find any merit in the addition made by the AO and it is deleted”.

5. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal on the following grounds:-

“1. On the facts and circumstances of the case, Ld CIT(A) erred in deleting the entire impugned addition of Rs.1,54,27,827/- as income from other source u/s. 56(2)(vii)(b) of the I.T Act, 1961 made on account of difference of the Stamp duty value and the purchase consideration of alleged purchase of property by the assessee.

2. On the facts and circumstances of the case, Ld. CIT(A) erred in principle, considering the alleged transfer of property in favour of the assessee was undertaken during the AY. 2013-14 as per the agreement of purchase, whereas the assessee failed to prove during the course of scrutiny proceedings that the transfer of the alleged property was actually undertaken in the relevant FY 2012-13 as per the provision of 2(47) of the IT Act, 1961. However the Deed of Conveyance as furnished by the assessee clearly depicts that the alleged property was actually transferred during the FY 2013-14 relevant to AY 2014-15”.

6. At the time of hearing before us, none has appeared on behalf of the assessee. This appeal of the Revenue is, therefore, being disposed of ex-parte qua the respondent-assessee after hearing the arguments of Id. D.R. and perusing the relevant material available on record. It is observed that the property in question was purchased by the partnership firm of M/s. Cosmopolitan Builders & Developers vide an agreement to sale dated 24.12.2012 and the final sale deed of the same was executed and registered on 30.04.2013. Although the assessee was a partner in the said firm along with two other partners, the property was purchased and duly registered in the name of the partnership firm of M/s. Cosmopolitan Builders & Developers. Even the Assessing Officer in the assessment order did not dispute this position, but the difference of Rs.1,54,27,827/- between the fair market value determined for the purpose of stamp duty and the amount of consideration shown in the sale deed was added by him to the total income of the assessee under section 56(2)(vii)(b) on the presumption that the partnership firm not being a living person or a separate legal entity was not entitled to purchase any immovable property. As rightly held by the Id. CIT(Appeals) in his impugned order, this presumption of the Assessing Officer was not well founded, inasmuch as, the partnership firm of M/s. Cosmopolitan Builders & Developers was entitled to purchase the immovable property as per section 5 of the Transfer of Property Act and it was corroborated by the fact that Registrar of Properties had duly registered the Purchase Deed of the property in favour of the partnership firm. At the time of hearing before us, even the Id. D.R. has not been able to dispute this position. Having regard to all these facts and circumstances of the case, we are of the view that the addition of Rs.1,54,27,827/- made by the Assessing Officer under section 56(2)(vii)(b) in the hands of the assessee as an individual who had not purchased the property in question was not sustainable and the Id. CIT(Appeals) was fully justified in deleting the same. We, therefore, uphold the impugned order passed by the Id. CIT(Appeals) and dismiss this appeal of the Revenue.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on October 18, 2019.

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(P.M. Jagtap)
Vice-President (KZ & HZ)

Kolkata, the 18th day of October, 2019

- Copies to :*
- (1) Income Tax Officer,
Ward-40(3), Kolkata,
3, Government Place (West), Kolkata-700 001**
 - (2) Shri Jawed Iqbal,
96, Rabindra Sarani, Kolatola, Kolkata-700 073**
 - (3) Commissioner of Income Tax (Appeals)-12, Kolkata,**
 - (4) Commissioner of Income Tax, Kolkata- , Kolkata;**
 - (5) The Departmental Representative**
 - (6) Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.